#### STATE BOARD OF ELECTIONS

#### STATE OF ILLINOIS

2329 S. MacArthur Blvd. Springfield, Illinois 62704-4503 217/782-4141

Fax: 217/782-5959

James R. Thompson Center 100 W. Randolph St., Ste. 14-100 Chicago, Illinois 60601-3232 312/814-6440

Fax: 312/814-6485



**BOARD MEMBERS** 

William J. Cadigan

John R. Keith

Andrew K. Carruthers Betty J. Coffrin

William M. McGuffage

Casandra B. Watson

Charles W. Scholz, Chairman

Ernest L. Gowen, Vice Chairman

**EXECUTIVE DIRECTOR** Steven S. Sandvoss

**AGENDA** STATE BOARD OF ELECTIONS Sitting as the Duly Authorized State Officers Electoral Board Monday, July 11, 2016 10:30 a.m.

2329 S. MacArthur Blvd. Springfield, Illinois and via videoconference James R. Thompson Center - Suite 14-100 Chicago, Illinois

#### Roll call.

- 1. Approval of the minutes from the June 13 meeting.
- 2. Call cases and accept appearances - objections to independent and new party candidate nominating petitions for the November 8, 2016 General Election;
  - Koehn v. Silver, 16SOEBGE102; a.
  - Brown & Welbers v. Schreiner, 16SOEBGE103: b.
  - Bigger v. Fluckiger & Koppie, 16SOEBGE104; C.
  - Bigger v. Conkin, 16SOEBGE105; d.
  - Wicklund v. Gill. 16SOEBGE106: e.
  - Swift & Patrick v. Harner, 16SOEBGE107; f.
  - Patrick & Swift v. Schluter, 16SOEBGE108; q.
  - Stocks v. Gill, 16SOEBGE109; h.
  - i. Sherman v. Soltysik & Walker, 16SOEBGE504;
  - Sherman v. Vann, 16SOEBGE505: i.
  - Sherman v. Fluckiger & Koppie, 16SOEBGE506; k.
  - Sherman v. Conklin, 16SOEBGE507; I.
  - Weber v. Harsy, 16SOEBGE508.
- 3. Approve the Rules of Procedure for the State Officers Electoral Board.
- Authorize the General Counsel to appoint Hearing Examiners as required. 4.
- 5. Consideration of objections to candidate nominating petitions for resolutions to fill vacancies in nomination for the November 8, 2016 General Election;
  - Hanson v. Smodilla, 16SOEBGE100; a.
  - Corneils & Frasz v. Burd, 16SOEBGE101; b.
  - Walker v. McGraw, Jr., 16SOEBGE500; C.
  - Imhoff v. Evans, 16SOEBGE501; d.
  - Danforth v. Mazeski, 16SOEBGE502;

State Board of Elections Agenda/July 11, 2016 Page 2

- f. Shorten v. Coyne, 16SOEBGE503.
- 6. Other business.
- 7. Recess the State Officers Electoral Board until Friday, August 26, 2016 at 10:30 a.m. in Chicago or until call of the Chairman, whichever occurs first.

## STATE OFFICERS ELECTORAL BOARD Monday, June 13, 2016

#### **MINUTES**

PRESENT: Charles W. Scholz, Chairman

Ernest L. Gowen, Vice Chairman William J. Cadigan, Member Andrew K. Carruthers, Member Betty J. Coffrin, Member

Betty J. Coffrin, Member John R. Keith, Member

Casandra B. Watson, Member

ABSENT: William M. McGuffage, Member

ALSO PRESENT: Steven S. Sandvoss, Executive Director

James Tenuto, Assistant Executive Director

Kenneth R. Menzel, General Counsel Darlene Gervase, Admin. Assistant III

The Chairman convened the State Officers Electoral Board at 10:31 a.m. Seven Members were present and Member McGuffage was absent. Member Watson held his proxy.

The General Counsel called cases and accepted appearances for the objections to Resolutions to Vacancies in Nomination for Established Party Candidates petitions for the November 8, 2016 General Election.

16 SOEB GE 100 Hanson v. Smodilla, for the Michael J. Kasper for the Objector: Luke Keller for the Candidate

16 SOEB GE 101 Corneils and Frasz v. Burd for the John Fogarty for the Objector. Michael J. Kasper for the Candidate.

16 SOEB GE 500 Walker v. McGraw, Jr., Michael J. Kasper for the Objector. No one appeared for the Candidate.

16 SOEB GE 501 *Imhoff v. Evans,* Michael J. Kasper for the Objector. No one appeared for the Candidate.

16 SOEB GE 502 Danforth v. Mazeski, Luke Keller for the Objector and Ross Seclar for the Candidate.

16 SOEB GE 503 Shorten v. Coyne, Luke Keller for the Objector and Courtney Nottage for the Candidate.

The General Counsel recommended the Rules be adopted. Member Coffrin so moved and Member Cadigan seconded the motion which passed unanimously.

Mr. Menzel recommended Philip Krasny as Hearing Officer for Objections 100, 101, 500 and 501 and James Tenuto for Objections 502 and 503. Member Cadigan so moved and Vice Chairman Gowen seconded the motion which passed 8-0.

SOEB Minutes June 13, 2016 Page 2

There being nothing further before the State Officers Electoral Board, Member Cadigan moved to recess until July 11, 2016 at 10:30 a.m. or until the call of the Chairman. Vice Chairman Gowen seconded the motion which passed unanimously by 8 voices in unison. The meeting recessed at 10:38 a.m.

Respectfully submitted,

Darlene Gervase, Admin. Asst. III

Steven S. Sandvoss, Executive Director

11:31AM

#### Illinois State Board of Elections

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#### Objection Report

Objection Information

Office and Party

Hearing Information

16SOEBGE102

PENDING

07/05/2016 10:13 AM

SBE

07/11/2016 10:30 AM

Candidates:

DAN SILVER

905 RATTLESNAKE FERRY ROAD

ALTO PASS, IL 62905

115TH REPRESENTATIVE

**GREEN** 

Objectors:

**ROBERT KOEHN** 

3349 HOG HILL ROAD

AVA, IL 62907

SBE

07/11/2016 10:30 AM

**16SOEBGE103** 

**PENDING** 

07/05/2016 11:43 AM

Candidates:

JOSEPH SCHREINER 4900 W. CULLOM AVE.

CHICAGO, IL 60641

**16TH CONGRESS** LIBERTARIAN

Objectors:

**CHRIS BROWN** 

2537 CREEKSIDE LANE

MORRIS, IL 60450

**BARRY WELBERS** 

30493 IL HIGHWAY 29

SPRING VALLEY, IL 61362

PENDING 16SOEBGE104

07/05/2016 11:44 AM

SBE

07/11/2016 10:30 AM

Candidates:

FRANK FLUCKIGER

1799 N. HIGHWAY 89

LAYTON, UT 84040

CHAD KOPPIE

39W 140 FREEMAN RD.

GILBERTS, IL 60136

PRESIDENT AND VICE PRESIDENT CONSTITUTION

UNITED STATES SENATOR

CONSTITUTION

Objectors:

MICHAEL BIGGER

110 W. BUTLER STREET

WYOMING, IL 61491

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#### Objection Report

Objection Information

Office and Party

Hearing Information

16SOEBGE105

**PENDING** 

07/05/2016 11:45 AM

SBE

07/11/2016 10:30 AM

Candidates:

ERIC M. CONKLIN

28396 EAST 150 NORTH ROAD

LEROY, IL 61752

**UNITED STATES SENATOR** 

Objectors:

MICHAEL BIGGER

110 W. BUTLER STREET WYOMING, IL 61491

INDEPENDENT

16SOEBGE106

**PENDING** 

07/05/2016 02:53 PM

SBE

07/11/2016 10:30 AM

Candidates:

DAVID M. GILL

24 CONWAY CIRCLE

BLOOMINGTON, IL 61704

13TH CONGRESS

117TH REPRESENTATIVE

THE TEA PARTY

INDEPENDENT

Objectors:

MARK D WICKLUND

3865 E CANTRELL ST.

DECATUR, IL 62521

16SOEBGE107

PENDING

07/05/2016 03:59 PM

07/11/2016 10:30 AM

Candidates:

ROBERT "BOBBY" HARNER

12818 TOLEDO ROAD

PITTSBURG, IL 62974

Objectors:

**TERRY SWIFT** 

10243 STATE HIGHWAY 14

BENTON, IL 62812

JAMES PATRICK

903 MAIN STREET

CARTERVILLE, IL 62918

SBE

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#### Objection Report

Objection Information

Office and Party

Hearing Information

16SOEBGE108

PENDING

SBE

07/05/2016 04:01 PM

07/11/2016 10:30 AM

Candidates:

SCOTT SCHLUTER 20284 RANCH LANE **MARION, IL 62959** 

117TH REPRESENTATIVE

LIBERTARIAN

Objectors:

JAMES PATRICK 903 MAIN STREET CARTERVILLE, IL 62918

**TERRY SWIFT** 10243 STATE HIGHWAY 14 BENTON, IL 62812

16SOEBGE109

PENDING

07/05/2016 04:03 PM

SBE

07/11/2016 10:30 AM

Candidates:

DAVID M. GILL

24 CONWAY CIRCLE BLOOMINGTON, IL 61704 13TH CONGRESS INDEPENDENT

Objectors:

JERROLD STOCKS

500 S. HENDERSON ST. MT. ZION, IL 62549

16SOEBGE504

**PENDING** 

07/05/2016 12:14 PM

SBE

07/11/2016 10:30 AM

Candidates:

**EMIDIO SOLTYSIK** 11713 AVON WAY #15 LOS ANGELES, CA 90066

ANGELA NICOLE WALKER 1509 E. KANE PL. #14 MILWAUKEE, WI 53202

PRESIDENT AND VICE PRESIDENT

SOCIALIST PARTY USA

PRESIDENT AND VICE PRESIDENT

Objectors:

**ROB SHERMAN** 778 STONEBRIDGE LANE PO BOX 7410 BUFFALO GROVE, IL 60089 SOCIALIST PARTY USA

11:31AM

07/05/2016 12:14 PM

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#### Objection Report

Objection Information

Office and Party

Hearing Information

16SOEBGE505

**PENDING** 

SBE

07/11/2016 10:30 AM

Candidates:

MARY VANN

8844 S. JEFFERY CHICAGO, IL 60617 PRESIDENT AND VICE PRESIDENT

**HUMAN RIGHTS PARTY** 

Objectors:

**ROB SHERMAN** 

778 STONEBRIDGE LANE

PO BOX 7410

BUFFALO GROVE, IL 60089

SBE

07/11/2016 10:30 AM

16SOEBGE506

**PENDING** 

07/05/2016 12:14 PM

Candidates:

FRANK FLUCKIGER 1799 N. HIGHWAY 89 LAYTON, UT 84040

CHAD KOPPIE 39W 140 FREEMAN RD.

GILBERTS, IL 60136

Objectors:

ROB SHERMAN

778 STONEBRIDGE LANE

PO BOX 7410

**BUFFALO GROVE IL 60089** 

PRESIDENT AND VICE PRESIDENT

CONSTITUTION

UNITED STATES SENATOR

CONSTITUTION

SBE

07/11/2016 10:30 AM

16SOEBGE507

**PENDING** 

07/05/2016 12:14 PM

Candidates

ERIC M. CONKLIN

28396 EAST 150 NORTH ROAD

LEROY, IL 61752

Objectors:

**ROB SHERMAN** 

778 STONEBRIDGE LANE

PO BOX 7410

BUFFALO GROVE, IL 60089

**UNITED STATES SENATOR** 

INDEPENDENT

Date:7/07/2016

11:31AM

Illinois State Board of Elections

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#### Objection Report

Objection Information

Office and Party

Hearing Information

16SOEBGE508

PENDING

07/05/2016 03:09 PM

SBE

07/11/2016 10:30 AM

Candidates:

**BUBBA HARSY** 

849 WELLS STREET ROAD DUQUOIN, IL 62832 116TH REPRESENTATIVE

INDEPENDENT

Objectors:

BRAD WEBER

213 E. STACEY STREET CHESTER, IL 62233

#### RULES OF PROCEDURE

# ADOPTED BY THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NEW POLITICAL PARTY AND INDEPENDENT CANDIDATES SEEKING TO APPEAR ON THE BALLOT FOR THE NOVEMBER 8, 2016 GENERAL ELECTION

Pursuant to Section 10-10 of the *Election Code* (10 ILCS 5/10-10), the State Board of Elections, acting in its capacity as the State Officers Electoral Board (the "Board"), a duly constituted electoral board under Section 10-9 of the *Election Code*, hereby adopts the following rules of procedure:

#### 1. EXPEDITED PROCEEDINGS

On all hearing dates set by the Board or its designated hearing examiner, (other than the Initial Hearing of the Board) the objector and the candidate (at times individually referred to as "party" or collectively referred to as the "parties") shall be prepared to proceed with the hearing of their ease. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the initial hearing or future hearings except for good cause shown. The parties shall make themselves reasonably available by telephone (including cellular phone) during the day and at least until 7:00 P.M (or as otherwise directed by the Board or hearing examiner) for receipt of notice from the Board, from the hearing examiner, or from opposing parties during the course of these proceedings. If the Board or hearing examiner has made reasonable attempts to contact a party by telephone, cellular phone, fax or by e-mail at the number(s) or address(s) provided by that party and the party cannot be contacted or fails to respond to such contacts, the party will be deemed to have received constructive notice of the proceedings and the proceedings may go forward without the presence of that party. If a party has received actual or constructive notice of a hearing and fails to appear. the failure to appear shall constitute acquiescence by such party as to any action taken at that hearing or any agreement made by and between the parties present at the hearing.

At 10:30 a.m. on Monday, July 11, 2016, the Board will conduct an Initial Meeting of the State Officers Electoral Board for the limited purpose of accepting appearances from the parties or their respective counsel, adopting the Rules of Procedure, appointing hearing officers and assigning the cases to them, and conducting case management conferences.

#### 2. CASE MANAGEMENT CONFERENCE (Held following the Initial Meeting)

Following the Initial Meeting, the Board or its designated hearing examiner may conduct a case management conference with the parties for the purpose of considering issues such as scheduling, attendance of witnesses, filing of briefs and motions, discovery matters and any other proceedings intended to aid in the expeditious resolution of the objection. No evidence will be accepted and no argument will be considered at this conference.

In situations where it appears on its face that a candidate's nominating petitions contain fewer than the minimum number of signatures necessary to qualify for the ballot, such candidate will be provided a Board staff produced page and line signature count. Such candidate will be instructed to appear at the next meeting of the State Officers Electoral Board if they wish to challenge the staff's count. Failure to appear, or failure to successfully rebut the staff count will result in the objection being sustained and the candidate will be disqualified from appearing on the ballot.

Additional case management conferences may be called by the Board, the General Counsel or the appointed Hearing Examiner, when necessary. If an objector fails to appear at the initial hearing after having been sent due notice, the Board may dismiss the objection for want of prosecution. If a candidate fails to appear at the initial hearing, he/she will be bound by any decisions made by the Board, the General Counsel or the designated hearing examiner.

#### 3. APPEARANCE

The candidate or objector may appear in person on his or her own behalf and participate in any proceeding before the Board or may appear by an attorney licensed to practice law in the State of Illinois. Non-attorneys other than a party appearing pro se shall not appear or participate (including the offering of any argument or advocating a position to the Board, any counsel to the Board or the Board's appointed Hearing examiner) in the Board's hearings on behalf of either the candidate or the objector, except that non-attorneys may participate as observers or coordinators at any records examination on behalf of any party. Out of state attorneys may appear subject to Part 125.60(b) of the Rules and Regulations of the State Board of Elections. A party must file with the Board and other parties of the case a written appearance stating his or her name, address, telephone or cellular phone number, and, if available, a fax number and e-mail address as well as the name and contact information of his or her attorney, where appropriate.

Though every effort will be made by the Board or its designated Hearing Examiner to keep parties informed of upcoming events, parties shall be responsible for periodically checking the Board's website, with the Board's staff or the Board's hearing examiner to keep apprised of scheduled events in their ease. The failure of a party to receive actual notice of an event posted on the Board's website regarding their ease shall not prevent such event from proceeding as scheduled nor shall it invalidate any action taken at such event.

#### 4. **AUTHORITY OF THE BOARD**

The Board itself or through its designated hearing examiner if applicable; (See Part 5 below) shall conduct all hearings and take all necessary action to avoid delay, to maintain order, to ensure compliance with all notice requirements, and to ensure the development of a clear and complete record. If a Hearing Examiner has been duly appointed, the Hearing Examiner shall preside over all such hearings. At the discretion of the Board or the hearing examiner, hearings may be conducted in two or more locations connected by telephonic or video conference; however, any witness who is going to provide verbal testimony must appear at the same location as the requesting party or its counsel (unless otherwise agreed by such requesting party or their counsel, and the hearing examiner or Board). The Board or its designated hearing examiner shall have all powers necessary to conduct a fair and impartial hearing including, but not limited to:

- (a) Administer oaths and affirmations;
- (b) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, provide for the taking of testimony by deposition if necessary, and in general conduct the proceedings according to recognized principles of administrative law and the provisions of these Rules;
- (c) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- (d) Rule upon offers of proof and receive relevant evidence:
- (e) Direct parties to appear and confer for the stipulation of facts or simplification of issues, and otherwise conduct case management conferences:
- (f) Dispose of procedural requests or similar matters:
- (g) Issue subpoenas and rule upon objections to subpoenas (subject to the provisions of paragraph 8 below) and discovery requests:
- (h) Consider and rule upon all motions presented in the course of the proceedings except that a Motion to Strike or Dismiss an Objection or a Motion for Directed Verdiet or its administrative equivalent can only be ruled upon by the Board. Unless otherwise directed by the hearing examiner, the hearing of the objection will proceed despite the filing of the above Motions:
- (i) Consider such competent and relevant evidence as may be submitted, including, but not limited to, documentary evidence, affidavits and oral testimony; and

(i) Enter any order that further earries out the purpose of these Rules.

The grant of authority listed above to the designated hearing examiner by these Rules shall not be construed to limit the authority of the Board to enter any contravening order.

The Board may on its own motion, strike any objection if it determines that the objection does not meet the requirements set forth in 10 1LCS 5/10-8. Objections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator. In addition, the Board on its own motion may strike any portion of an objection that it determines to be not well grounded in fact and/or law.

#### 5. HEARING EXAMINERS

In view of the time limitations and the amount of evidence to be presented, the Board may appoint a hearing examiner in any case which the Board deems such an appointment necessary or expedient. Any hearing examiner so appointed shall have the duties and powers of the Board as set forth in these rules, except that a hearing examiner shall not have the power to rule upon any motion which would be dispositive of the objection or issue a final decision. In addition, any hearing examiner appointed by the Board is authorized and directed (a) to hold a full hearing and receive all evidence and argument, (b) to prepare a record of the hearing including a full transcript of court reporter stenographic notes of the proceedings (where the presence of a court reporter was determined necessary by the hearing examiner), (c) to prepare an outline of all the evidence, issues and argument (Such outline may be incorporated into the written recommendation.) and (d) to prepare recommendations, and proposal for decision for submission to the Board, the General Counsel and the parties. In cases where a hearing examiner is appointed, the Board shall not issue a final decision until a proposal for decision submitted by the Hearing Examiner is served upon the parties and an opportunity is afforded each party to take exceptions, whether written or oral. and, if the Board so permits, oral argument before the Board. The Board will make a final ruling on the objection and may consider the following as part of its consideration and appraisal of the record: the petition and the objection thereto, the hearing transcript, the hearing examiner's outline. recommendations and proposal for decision, and any exceptions, briefs, exhibits, offers of proof or arguments presented by the parties.

#### 6. SERVICE OF DOCUMENTS

All briefs, notices, documents, pleadings, answers and correspondence shall be served upon the opposing parties, or their attorneys if represented by counsel, and filed with the General Counsel and the hearing examiner where appropriate. All briefs, notices, documents, pleadings, answers and correspondence may be sent by telefax or e-mail attachment if the other receiving party or his or her representative agrees. In those instances where a telefax or an unsigned e-mail communication is used, a hard copy shall also be sent by regular mail. The failure to send or

receive a hard copy shall not negate or render invalid the contents of the original communication. The date the telefax or e-mail attachment is sent shall be deemed the date notice is given.

#### 7. MOTIONS PRACTICE

#### All Motions Generally

- (a) If a hearing examiner has been appointed, motions shall be addressed to the hearing examiner, with copies provided to the General Counsel's office. The hearing examiner will decide motions in due course and will recommend a decision on dispositive motions to the Board. If a hearing examiner has not been appointed, motions will be filed with the General Counsel and will be decided by the Board.
- (b) The Board will decide all motions in cases in which no hearing examiner has been appointed. In accordance with the Open Meetings Act, the Board may meet by video conference call to rule on such motions. The Chairman may appoint a member of the Board or the staff of the Board to hear and decide for the Board all motions except dispositive motions. Motions addressed to the Board shall be thoroughly briefed so as to minimize the time needed for oral argument. Such argument shall be permitted at the Board's discretion.
- (c) Motions for continuance are discouraged and will be granted only in extreme circumstances.

#### <u>Dispositive Motions</u>

- (d) The Board will decide all dispositive motions upon receipt of the recommendation of a hearing examiner and/ or the General Counsel.
- (e) Preliminary motions not already ruled upon including motions for summary judgment (or similar motions) and objections to an objector's petition in the nature of a motion to dismiss or strike the objections will be heard prior to the case on the merits if so directed by the Chairman. The Board may, in its discretion, reserve rulings on preliminary motions and objections pending further hearing thereon.
- (f) The Board may, upon its own motion with notice to the parties, dismiss for failure to prosecute an objection in any case where the objector fails to attend the initial meeting of the Board at which the objection is called or repeatedly fails to attend proceedings ordered by the Board or its duly appointed hearing examiner.

#### 8. SUBPOENAS

Any party desiring the issuance of a subpoena shall submit a request to the hearing examiner. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery, however all depositions can be used for evidentiary purposes) or hearing and/or subpoenas duces tecum requiring the production of such books, papers, records and documents as may relate to any matter under inquiry before the Board. The request must be filed no later than 5:00 p.m. on Wednesday, July 13th and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the hearing examiner. The hearing examiner shall submit the same to the Board (via General Counsel) no later than 5:00 p.m. on Thursday, July 14th. The Chairman and Vice Chairman shall consider the request and such request shall only be granted by the Chairman or Vice Chairman. The opposing party may submit a response to the request; however any such response shall be given to the hearing examiner no later than 4:00 p.m. on Thursday, July 14th, who shall then transmit it to the Chairman and Vice Chairman (through the General Counsel's office) with the subpoena request. The hearing examiner shall issue a recommendation on whether or not the subpoena request should be granted no later than 5:00 p.m. on Friday, July 15th. The Chairman or Vice Chairman may limit or modify the subpoena based on the pleadings of the parties or on their own initiative. Any subpoena request received subsequent to 5:00 p.m. on July 13th will NOT be considered unless good cause shown. If approved, the party requesting the subpoena shall be responsible for proper service thereof.

Any party desiring a subpoena duces tecum directed to an election authority to produce copies of voter records relating to voter signatures which were ruled upon during a record examination (for purposes of making a motion under Rule 9) may submit a request to the General Counsel, with copies given to the hearing examiner and opposing party. The General Counsel may grant such subpoenas. The party requesting the subpoena shall be responsible for proper service thereof.

In case any person so served shall neglect or refuse to obey a subpoena, or refuse to testify in a hearing before the Board or Hearing Examiner, the Board may, at the request of any party, file a petition in the Circuit Court setting forth the facts of such knowing refusal or neglect. The petition shall be accompanied by a copy of the subpoena, the return of service thereon and the sworn statement of the person before whom the witness was to appear that the witness did not so appear. The petition shall apply for an order of the Court requiring such person to comply with the duly issued subpoena.

#### 9. RECORDS EXAMINATION

**NOTE:** Records exams will be scheduled as soon as practicable, and may commence as early as **Monday, July 18**<sup>th</sup>.

At the direction of the Board or a hearing examiner, the parties may be directed to appear at a "records examination." Notice of same shall be provided by the Board or the hearing examiner. At the records examination, staff assigned by the Board shall, in an orderly and expeditious manner, search for and examine the State Board of Elections' computerized registration records for comparison to the names on the candidate petition that have been objected to. Board staff shall examine each signature based upon the specific objection raised to it and determine, as appropriate, whether 1) if the person who signed the petition is a registered voter at the address corresponding to the person's signature on the petition and if so, 2) if the signature of the person who signed the petition reasonably compares with the signature shown on that person's voter registration record contained in the computerized voter registration database, 3) the person's address is within the requisite district, and/or 4) the person signed the petition more than once.

Board staff shall note their determinations as to the validity of each signature by clicking on the appropriate boxes on the computer screen, which shall indicate whether the objection to each signature is sustained or overruled. Results of the examination shall be provided to the candidate and objector following the completion of the examination on a daily basis, but may not be so provided until the following day. Such results will consist of the page and line number of each signature that has been examined, and will indicate the staff determination of validity as to each signature examined.

The Board's staff shall, based upon their examination of the relevant registration records, make and announce a finding as to whether certain objections in the objector's petition are sustained or overruled. Such computerized voter registration records of the State Board of Elections and the staff findings as to whether the objections are sustained or overruled may be considered as evidence with respect to the objections described above.

The Board or a hearing examiner may, in their discretion, order that a partial or sample records examination be conducted in order to test the validity of certain objections in the Objector's petition when it appears possible, viewing the face of the objections or upon other known facts, that the objections may not have been made as a result of a reasonable inquiry or investigation of the facts or were not made in good faith. In the alternative, the Board or hearing examiner may order, on its own motion or upon motion of the candidate, that the objector show cause as to why the objection should not be stricken as having not been well grounded in fact or in law. Failure to show such cause shall be grounds to strike the objection.

Each party shall have the right to have designated and duly authorized representatives ("watchers"), including the party or the party's counsel, present during the records examination. No more than one watcher for each party may be assigned to any given computer terminal at which a records examination is being conducted. The failure of a watcher to timely appear at the examination shall not delay nor affect the validity of the examination and the records examination shall proceed.

Watchers are to participate as observers only. The Board's staff shall not be required to solicit the opinion of any watcher as to any matter nor consider such opinions if offered. Arguing with Board staff or other abusive conduct will not be tolerated. By order of the General Counsel or his designee, a watcher may be removed from the records examination proceedings for the conduct specified above and any other conduct that disrupts the orderly conduct of the proceedings and if necessary, this provision will be enforced by appropriate law enforcement. In the event of such removal, the Board may continue with the records examination in the absence of the removed watcher. A party may replace a removed watcher with another watcher; however, the records examination will not be delayed by the absence of a replacement watcher. Photography of any kind, including video recording, is prohibited in the records examination area.

Following the records examination, staff rulings thereon shall be used to create a line by line computer generated report of the results of the records examination. The report shall then be sent via e-mail or facsimile to the parties or their counsel. The report shall be transmitted to both parties or their counsel at the same date and time and such date and time shall serve as the commencement of the three (3) business day time period (aka, the Rule 9 Motion Period) described below.

The parties will be given an opportunity to present all objections to staff findings properly made at the records examination or prior thereto in the nature of a standing objection, to the Board or the hearing examiner at the evidentiary hearing on the merits of the objection scheduled by the Board or the hearing examiner (the Rule 9 Motion Hearing). The party making the objection bears the burden of producing evidence proving that the staff finding was in error. Such evidence offered to refute the staff finding must be submitted to the Board or the hearing examiner with a copy provided to the opposing party no later than 5:00 p.m. on the third business day following the date of the transmittal of the report described in the immediately preceding paragraph unless extended by the Board for good cause shown. Evidence in the form of an affidavit must be sworn to, signed, and notarized before a notary public or other officer authorized to administer oaths in the State of Illinois. Verifications under Section 1-109 of the Code of Civil Procedure (735 fLCS 5/1-109) are not acceptable. If any extension is given to the candidate or objector to rehabilitate or strike any signature then the opposing party's time period to provide other evidence to rebut that submission shall be equally extended.

Section 1A-25 prohibits viewers from printing any records viewed at the records examination and there is no provision requiring the Board to print any such records for the benefit of any party. Therefore, at no time will the Board entertain any requests for printouts of records that were examined during the records examination conducted by the Board except as otherwise ordered by the Board. Lists of registered voters are available for purchase by political committees registered with the Board, pursuant to Article 4, 5 and 6 of the Election Code. Note: Such records do not contain the signatures of the voters. In addition, records of individual voters can be obtained through the office of the election authority in whose jurisdiction the voter is registered. Check with the appropriate election authority as to obtaining such records, and the content of same.

If at any time during the records examination it appears that (i) the number of valid signatures remaining on the petition is fewer than the number of valid signatures required by law or (ii) the number of valid signatures on the petition will exceed the number of valid signatures required by law even if all of the remaining objections to be decided were sustained, the Board or the hearing examiner may suspend the records examination and the results of the records examination shall be forwarded to the Board or the hearing examiner, as the case may be. If this is so ordered, the party adversely affected by the order will be afforded an opportunity to present evidence that there exists a sufficient amount of valid or invalid signatures as the case may be, to warrant resumption of the examination. Such evidence must be submitted no later than 5:00 p.m. on the second business day following the order of suspension. The records examination may then be resumed or terminated at the discretion of the Board or the hearing examiner.

(For a detailed description of specific objections and the policies applied to each, please refer to the attached Appendix A.)

#### 10. EVIDENCE

Evidence submitted by either party will be heard by the Board or the designated hearing examiner, including, but not limited to, documentary evidence, depositions, affidavits, and oral testimony. Documentary evidence shall be presented at a hearing, however service of such documentary evidence may be made by facsimile or e-mail. Any affidavits submitted must be original, and any voter registration records must be certified by the election authority that issued them.

Due to the fact that the Board must hear and pass upon objections within a limited time, extended examination and cross examination of witnesses will be subject to the discretion of the Board or its designated hearing examiner, and the Board/hearing examiner will not be bound by the rules of evidence which prevail in the circuit courts of Illinois. Where the Board is hearing the objection itself, the Chairman shall make all necessary evidentiary rulings, subject to appeal to the entire Board. Where a hearing examiner has been appointed, he or she will receive all evidence and make all evidentiary rulings, subject to review by the entire Board. The Board will not retry issues heard by a hearing examiner unless the hearing examiner has excluded evidence the Board believes should have been admitted. In such eases the Board will hear the excluded evidence and such other evidence as may be appropriate in response to the matter excluded. The Board will not hear evidence that could have been but was not presented to the hearing examiner, nor will the Board or hearing examiner consider objections that could have been, but were not raised in the original written objection.

#### II. ARGUMENT

All arguments and evidence must be confined to the points raised by the objector's petition and objections, if any, to the objector's petition. The Board reserves the right to limit oral arguments in any particular case and will ordinarily allow not more than ten minutes per side for argument.

With regard to the substance of the objections, generally the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence ("the burden of proof") that the objections are true and that the petition is invalid.

#### 12. ORDER

If the objections are sustained in whole or in part, the Board will issue an Order declaring the remedy up to and including invalidation of the Petition. The Board will state its findings in writing noting the objections which have been sustained. If the objection is overruled, the Board will issue the appropriate Order; stating its findings in writing.

#### 13. GENERAL PROCEDURES

For the matters not covered herein, the Board will generally follow the provisions of the Code of Civil Procedure of Illinois and the rules of the Illinois Supreme Court regulating discovery and practice in trial courts, provided however that the Board will not be strictly bound by the Code or rules in all particulars.

#### 14. SESSIONS

After the Board convenes the initial hearing, it will be in continuous session until all objections arising out of that filing period have been considered and disposed of, and, in the discretion of the Board, its session may be extended or recessed for a period to be determined by the Board.

#### 15. TRANSCRIPT AND RECORD OF PROCEEDINGS

A transcript of the proceedings will be made by a certified court reporter. Copies may be purchased from the reporter and will not be furnished by the Board. If a party aggrieved by the decision of the Board timely files and serves upon the Board a proper petition for judicial review pursuant to Section 10-10.1 of the Election Code, the Board shall, upon the written request of the petitioner or upon order of the Circuit Court, prepare and file with the Circuit Court the record of proceedings before the Board. The petitioner or the Court shall designate which portions of the record of proceedings are to be prepared and filed. The respondent or respondents in the judicial review proceedings may designate in writing additional portions of the record of proceedings to be prepared and filed if not included in the petitioner's designation of the record. The parties to a judicial review proceeding are encouraged to limit the record of proceedings to be filed with the Court to only those records material and relevant to the issues on judicial review so that the preparation and filing of unnecessary records is avoided.

ADOPTED THIS 11 <sup>th</sup> day of July 2016		
	)	CONSTITUTING THE
	)	STATE BOARD OF
	)	ELECTIONS
<del></del>	)	SITTING AS THE
	)	DULY AUTHORIZED
	)	STATE OFFICERS
	)	ELECTORAL
	,	BOADI

#### APPENDIX A.

Listed below are the most common grounds for objections to petitions and the basis on which the Board will render decisions on objections unless evidence or argument presented at hearing persuade the Board that circumstances require a differing decision.

When the records examination is being conducted, any exceptions to the decision of the examiner must be made to the ruling at the time the ruling is made or the exception to the ruling is waived. Any party may, at the beginning of the records examination issue a general objection to any adverse decision of the records examiner obviating the need for individual objections. If, subsequent to the general objection, a party decides not to take exception to a particular ruling of the records examiner, the party may withdraw the objection as to that particular ruling.

#### Pattern of Fraud

If the Board determines that a pattern of fraud exists based on an inordinate number of invalid petition signers and/or petition circulators accompanied by evidence of fraudulent conduct, such that the integrity of the entire petition or the petition sheets of individual circulators is sufficiently compromised, the Board may strike the entire petition (or individual petition sheets) on this basis. In order to be considered by the Board or the hearing examiner, an allegation of a pattern of fraud must be initially pled by the objector and such pleading must be a part of the initial written objection filed by the objector. In the absence of such initial pleading by the objector, consideration of whether any pattern of fraud exists shall rest solely in the Board's discretion. To make a valid claim of a pattern of fraud, an objector must allege specific instances of fraudulent conduct in the signature gathering and related processes. A general claim of a pattern of fraud without specific examples is insufficient to establish such a claim. In addition, the sheer number of invalid signatures on a petition, or on sheets circulated by a specific circulator, without an accompanying allegation of specific fraudulent conduct, shall not by itself establish a pattern of fraud.

#### I. Objections to Individual Signers

#### A. Signer's Signature Not Genuine

The voter's original signature on his or her registration record shall be examined. If, in the opinion of the records examiner the signature is not genuine, the objection shall be sustained. There is no requirement that a signature be in cursive rather than printed form. Any objection solely on the ground that the signature is printed and not in cursive form or where the basis for the non-genuineness is the fact that the signature is printed, will be denied as failing to state grounds for an objection. Staff must still perform the above mentioned examination in situations where the signature is printed to determine whether there is a reasonable match.

#### B. Signer Not Registered at Address Shown

The voter's registration information shall be examined. If the address on the voter's registration record does not match the address opposite his or her name on the petition.

the objection shall be sustained. **NOTE:** If the candidate can present evidence at the Rule 9 signature rehabilitation/challenge hearing that the voter resided and was registered to vote at the address shown on the petition at any time during the petition circulation period, the objection shall be overruled pending evidence from the objector that the voter did not reside at such address on the date he/she signed the petition.

#### C. Signer Resides Outside the State or District

Any objection to a petition signer whose address is determined by the records examiner to not in fact be located in Illinois or within the applicable district, shall be sustained.

#### D. Signer's Address Missing or Incomplete

In general, if there is enough information in the address for the SBE staff to locate the voter whose name and address is on the petition, this objection will be overruled. If there is no address listed other than a city or village, the objection should be sustained unless in the city, town or village, street addresses either do not exist or are not commonly used. However, if the address line is blank, but the signers surname is the same as the person signing above where an address is listed, indicating that such signer resides at the same address, any objections to missing address shall be overruled. Objections to missing counties or to abbreviated municipalities (eg: FP – Forest Park, OP – Oak Park, etc.) or to streets lacking a direction indicator (eg: North State, S. Main) shall be overruled if in fact the voter resides in that municipality or at the numerical address on that street. In addition, objections to ditto marks in the address column, where such marks indicate that a subsequent signer or signers live at the same address as the signer above, shall be overruled. Where the petition and the registration card both show the same rural route and box number, but no street address, the objection will be overruled. If the petition shows a street and house number and the registration card shows a rural route and box number the objection will be sustained. If however, the voter's place of residence has in fact not changed, but only the designation of it has changed, it is the burden of the candidate to show that only the designation of the residence has changed. (This issue should be presented to the Hearing Examiner at the Rule 9 signature rehabilitation/challenge hearing.) If the address listed next to the voter's signature matches the registration record in pertinent part (eg. the petition lists "John Doe, 1020 South Spring, Springfield" and the registration record lists "John Doe, 1020 South Spring, P.O. Box 4187, Springfield), the objection will be overruled.

#### E. Signature is Not Legible

If the records examiner determines that a signature is not legible, the examiner shall check the address opposite the illegible signature. If none of the signatures of voters listed at that address match, the objection will be sustained. The basis of the objection however, must be that the petition signer is not registered at the address shown on the petition. If the basis of the objection is that the signature is not genuine, the objection will be overruled for the reason that it is impossible to determine genuineness of the signature without a comparison to the signature on the voter registration record. If the address is

also illegible, and the candidate cannot sufficiently, in a reasonably short amount of time, identify the signatory so as to permit the records examiner to check the signature against a specific voter record, then the objection will be sustained. If the illegible signature is located at a single address at which ten or more voters are registered, the examiner shall not be required to examine every signature at that address to find a match, but may instead rule the objection sustained. In the event that the objection is sustained, the candidate at a later time (but in no event later than the expiration of the three (3) business day time period set forth in Section 9 above) will be given an opportunity to present a copy of the signer's voter registration record for a signature comparison. If in the opinion of the records examiner or the Hearing Examiner the signature is genuine and the address on the voter registration record matches that contained on the petition, the objection will be overruled.

#### F. Signer Signed Petition More Than Once at Sheet/Line Indicated

If the signatures on the sheet and line numbers indicated match, the objection shall be sustained and all but the signature appearing on or closest to the first petition sheet shall be invalidated. If the page and line number of the alleged duplicate signature is not listed in the objection, the objection shall be overruled.

#### G. Signature Incorporates Initials/Name isn't Identical to Registration Record

If, for example, the registration record indicates "John E. Jones", 1020 South Spring, Spfld., and the petition lists "J. Jones" at 1020 South Spring, Spfld, the objection will be overruled if the signature on the card and the petition match. An objection that is based solely on the fact that a petition signature differs in form from the signature on the voter's registration eard will be denied as failing to state grounds for an objection.

#### H. Voter Registration Record of Petition Signer Cannot be Located

The disposition of the objection depends on the grounds. If the objector is alleging that the person is not registered to vote at the address shown on the petition, the objection will be sustained. If the objection is based on the circumstances set forth in A, D, E, or G above, where the only evidence to substantiate the objection is contained on the voter registration card, the objection will be overruled.

#### I. Petition Signer's Voter Registration is on Inactive Status

Any objection solely on the ground that the petition signer's registration status is inactive will be denied as failing to state grounds for an objection. The signature of an inactive voter who remains at the registered address shall be deemed valid; whereas, the signature of an inactive voter who has moved from the registered address may be objected to as "not registered at address shown." At the Rule 9 signature rehabilitation/challenge hearing, the Objector may introduce evidence that the voter in question no longer resides at the address shown on the petition.

#### II. Objections to Petition Circulators

The following information is intended as guidance to the Board and its duly appointed hearing officers in considering objections to a circulator's qualifications, the sufficiency of the circulator's affidavit and the method of circulation. It is not intended to establish legal standards for the following enumerated objections nor is it intended as a substitute for statutory or case law to the contrary.

#### A. Circulator did not Sign Petition Sheet

If the circulator's statement is unsigned, the objection should be sustained, and all the signatures on the petition sheet invalidated.

#### B. Ineligible Circulator

The fact that a circulator is not 18 years of age, or a United States Citizen or a resident at the place he or she states in the affidavit may be proved by any competent evidence. If the circulator is a registered voter in any state, a certified copy of his or her registration document is competent evidence of age, citizenry and residence. Ineligible circulators may not circulate petitions and a petition page so circulated may be invalid. In addition, if it is shown that an ineligible circulator signed the circulator affidavit, this may constitute perjury and such evidence may be referred by the Board to the appropriate prosecutor's office. The use of more than one ineligible circulator may constitute a pattern of fraud, providing a basis for disqualifying the entire petition.

#### C. Circulator's Signature Not Genuine

If the circulator is a registered voter in Illinois, his or her original signature on his or her registration card shall be examined by the hearing examiner. NOTE: It is not a requirement that a petition circulator be a registered voter. If, in the opinion of the hearing examiner the signature is not genuine, the objection should be sustained. The validity of a circulator's signature may be proved by any competent evidence. Collateral evidence of the validity of the signature of the circulator is admissible, such as testimony of a person purporting to observe one person signing the name of another circulator. There is no requirement that a signature be in cursive rather than printed form, and an objection solely on the ground that the signature is printed and not in cursive form, or where the basis for the non-genuineness is the fact that the signature is printed, will be denied as failing to state grounds for an objection.

#### D. Circulator's Address is Incomplete

The circulator's address must be sufficiently complete so as to easily locate the circulator at the listed address in the event the circulator's qualifications or the method of circulation is challenged.

#### E. Purported Circulator Did Not Circulate Sheet

Upon proof by the objector that the individual who signed as circulator did not circulate the petition sheet or personally witness the signing of the signatures on the petition sheet, the entire sheet may be invalidated. See also II (C) above.

#### F. Sheet Not Notarized

If the petition sheet is not notarized, the entire sheet may be invalidated. Simply missing a notary scal docs not necessarily invalidate the sheet, unless the objector establishes that the sheet was not notarized by a qualified notary public.

#### G. Purported Notary Did Not Notarize Sheet

If the petition sheet is not in fact notarized by the notary who purports to notarize it, the entire sheet may be invalidated. See also II(C) above.

#### III. Miscellaneous Objections

#### A. Signatures Exceed the Statutory Maximum

If a petition is filed that contains signatures in excess of the statutory maximum, an objection filed solely on that basis will not result in the petition being invalidated. However, for purposes of determining the total number of valid signatures, the Board will not consider any signatures (or objections thereto) in excess of the statutory maximum, the count of which will commence with page 1.

#### APPENDIX B.

#### Schedule of Brief and Motion Filing

Candidate's Motion to Strike and/or Dismiss or other similar motion (MTSD) Objector's Motion for Summary Judgment or other similar motion (MSJ)

Must be filed no later than 5:00 p.m. on the second business day (**Wednesday**, **July 13**<sup>th</sup>) following the date of the Initial Meeting of the Board, unless extended by the Board or hearing examiner for good cause shown.

## Objector's Response to Candidate's MTSD Candidate's Response to Objector's MSJ

Must be filed no later than 5:00 p.m. on the second business day following the due date of the Candidate's MTSD or Objector's MSJ (**Friday**, **July 15**<sup>th</sup>) unless extended by the Board or hearing examiner for good cause shown.

## Candidate's Reply to Objector's Response to Candidate's MTSD Objector's Reply to Candidate's Response to Objector's MSJ

Must be filed no later than 5:00 p.m. on the second business day following the due date of the Objector's Response to the Candidate's MTSD or the Candidate's Response to the Objector's MSJ (**Tuesday**, **July 19**<sup>th</sup>) unless extended by the Board or hearing examiner for good cause shown.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading. Briefs on any issue or issues shall be filed as directed by the Board or the hearing examiner.

## STATE BOARD OF ELECTIONS STATE OF ILLINOIS

2329 S. MacArthur Blvd. Springfield, Illinois 62704-4503 217/782-4141 Fax: 217/782-5959

James R. Thompson Center 100 W. Randolph St., Ste. 14-100 Chicago, Illinois 60601-3232 312/814-6440

Fax: 312/814-6485



EXECUTIVE DIRECTOR Steven S. Sandvoss

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Ernest L. Gowen, Vice Chairman
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Casandra B. Watson

TO:

Chairman Charles W. Scholz

Vice Chairman Ernest L. Gowen

Members of the Board

Executive Director Steven S. Sandvoss

From:

Kenneth R. Menzel, General Counsel

Re:

Appointment of Hearing Officers

Wicklund v. Dill

Swift & Patrick v. Schulter

Date:

July 7, 2016

I have selected the following persons to serve as hearing officers for the several objections filed with the State Board of Elections following the filing period for new party and independent candidates at the November 8, 2016 General Election and propose the following cases be assigned to them for hearing.

#### David Herman 16 SOEB GE 106

16 SOEB GE 108

16 SOEB GE 508

	Striff be I diller T. Sellatter
16 SOEB GE 109	Stocks v. Dill
Jim Tenuto	
16 SOEB GE 102	Koehn v. Silver
16 SOEB GE 103	Brown & Welbers v. Schreiner
16 SOEB GE 104	Bigger v. Fluckiger & Koppie
16 SOEB GE 105	Bigger v. Conklin
16 SOEB GE 107	Swift & Patrick v. Harner
16 SOEB GE 504	Sherman v. Soltysik & Walker
16 SOEB GE 505	Sherman v. Vann
16 SOEB GE 506	Sherman v. Fluckiger & Koppie
16 SOEB GE 507	Sherman v. Conklin

Weber v. Harsy

I would request of the Board authorization to appoint the above persons to serve as hearing officers and for the above cases to be assigned to them for hearing.

Sincerely

Kenneth R. Menzel, General Counsel

#### Hanson v Smodilla 16 SOEB GE 100

Candidate: Tracy Smodilla

Office: 22<sup>nd</sup> Senate

Party: Republican

**Objector:** Edward E. Hanson

Attorneys For Objector: Michael Kasper and Kevin Morphew

Attorney For Candidate: Burt Odelson

Number of Signatures Required: 1000

Number of Signatures Submitted: 2469

Number of Signatures Objected to: 1693

**Basis of Objection:** The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," "Signer Signed Petition More than Once" and "Signer Voted in the 2016 Democratic Primary."

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss, Candidate's Motion to Extend Time to File Evidence and Proofs Pursuant to Rule 9, Objector's Rule 8 Material, Candidate's Motion to Strike Objector's Rule 8 Motion

Binder Check Necessary: Yes

**Hearing Officer:** Phil Krasny

**Hearing Officer Findings and Recommendations**: A records examination commenced and was completed on June 16, 2016. The examiners ruled on objections to 1693 signatures. I198 objections were sustained, leaving 1271 valid signatures, which is 271 signatures more than the required minimum number of 1000 signatures.

The Candidate's Motion to Strike and Dismiss seeks to dismiss those objections in which the Objector has challenged the signatures of persons who allegedly voted in the 2016 Democratic primary and thereafter signed the Candidate's nominating petition to run in the general election as a Republican for the office of State Senator of the 22<sup>nd</sup> Legislative Representative District. The Ilearing officer agrees with Candidate's argument that the Illinois Election Code no longer restricts an individual who votes in one established party's primary from subsequently signing the

nomination petition for a candidate of another party, and recommends that the Motion to Dismiss be granted.

The Hearing Examiner further recommends that the Candidate's "Rule 8" Motion be dismissed, because documentation supporting the motion was not served on the Candidate or Hearing Examiner as set forth in the June 13, 2016 Order and is otherwise customary.

Finally, even if the Board declines to follow the Hearing Examiner's recommendation to exclude the "Rule 8" materials, a majority of the objections raised pertain to a signer having voted in the Democratic primary prior to signing the Candidate's petition; once subtracting those and assuming that all of the remaining challenged signatures would be sustained, the parties agree that the Candidate would still have in excess of the 1000 required signatures.

Accordingly, the Hearing Examiner recommends that the Candidate's name be certified for the ballot as the Republican Candidate for the office of State Senator for the 22<sup>nd</sup> Legislative District.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

### BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF STATE SENATOR FOR THE 22nd LEGISLATIVE DISTRICT

Edward E. Hanson,	)	
Petitioner-Objector,	)	
	)	ORIGINAL ON FILE AT
v.	)	STATE BD OF ELECTIONS
	)	ORIGINAL TIME STAMPED
Tracy Smodilla,	)	AT 10:31 AM JUNE 7th 2016
	)	,
Respondent-Candidate.	)	

#### **OBJECTOR'S PETITION**

#### INTRODUCTION

Edward E. Hanson, hereinafter sometimes referred to as the Objector, states as follows:

- 1. The Objector resides at 358 Jefferson Ave., Elgin, Illinois, 60120 in the 22nd Legislative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
- 2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of State Senator for the 22nd Legislative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

#### **OBJECTIONS**

- 3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Tracy Smodilla as a candidate for the office of State Senator for the 22nd Legislative District of the State of Illinois ("Office") to be voted for at the General Election on November 8, 2016 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
- 4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to Section 8-17 and 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Legislative District equal to the number required for a candidate to qualify for the ballot in the Primary Election.

- 5. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 1,000 duly qualified, registered and legal voters of the 22nd Legislative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 1,000 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
- 6. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.
- 7. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.
- 8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 22nd Legislative District of the State of Illinois, and such persons are not registered voters in the 22nd Legislative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.
- 9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.
- 10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet/Line Indicated," in violation of the Illinois Election Code.
- 11. The Nomination Papers contain petition sheets with the names of persons who are not eligible to sign the Candidate's petitions because they are not qualified primary voters or electors of the Republican Party because those signers voted in the Democratic Party's Primary Election on March 15, 2016, as is set forth specifically in the Appendix-

Recapitulation attached hereto and incorporated herein, under the heading, Colum f., "Voted in the 2016 Democratic Primary" in violation of the Illinois Election Code.

- 12. The Nomination Papers contain less than 1,000 validly collected signatures of qualified and duly registered legal voters of the 22nd Legislative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.
- 13. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 22nd Legislative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Tracy Smodilla shall not appear and not be printed on the ballot for nomination to the office of State Senator of the 22nd Legislative District of the State of Illinois, to be voted for at the General Election to be held November 8, 2016.

Edward E. Hanson OBJECTOR

Address: Edward E. Hanson 358 Jefferson Ave. Elgin, IL 60120

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STATE OF ILLINOIS	)	
COUNTY OF Kane	)	SS.

Edward E. Hanson E.H.

I, Edward E. Hansen, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me
by <u>Edward E. Hanson</u> Edward E. Hanson

his the 5 day of June, 2016.

Notary Public

OFFICIAL SEAL
NATHANIEL M HARRIS

Edward E. Hanson

4

#### BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF STATE SENATOR FOR THE 22ND LEGISLATIVE DISTRICT

EDWARD E. HANSON,	)	-	. ,.
Petitioner-Objector,	) )		: : :
v.	) No. 16 SOEB GE 100		``` 
TRACY SMODILLA,	)	(1 년 (개 년 (개 년	-{       
Respondent-Candidate.	) )		

#### **MOTION TO STRIKE AND DISMISS**

NOW COMES the Candidate, TRACY SMODILLA, by and through her attorneys, ODELSON & STERK, LTD., and files this Motion to Strike and Dismiss the Objector's Petition, and states in support thereof as follows:

- 1. Section 5/10-8 requires the Objector to be a legal voter of the political subdivision or district of the Candidate being challenged.
- 2. The Objector herein is a registered voter in Chicago, Illinois (See Ex. A), and not a legal objector to the Candidate's petitions in the 22<sup>nd</sup> Legislative District.

#### 3(a). General Misstatement of the Law

Paragraph eleven (11) misstates the law relative to qualified primary electors or voters and their ability to sign partisan nominating petitions. The Objector cites no sections of the Election Code which apply to the inability of a qualified primary elector or voter to sign a partisan petition to nominate a candidate for the General Election after the primary wherein no candidate was nominated and a vacancy created. Further, the Objector misstates the law relative

to the ability of an individual to sign a "General Election" partisan potition. This paragraph is legally deficient and should be stricken.

#### 3(b). Legal Analysis

There is no statutory prohibition to voting in a partisan election or signing a partisan petition prior to a primary election, and then signing a partisan petition for a different party for the general election to fill a vacancy in nomination.

The statutory definition of "qualified primary elector" is found in 5/7-10, the 3<sup>rd</sup> paragraph prior to the end of the section. "A "qualified primary elector" of a party may not sign petitions for or be a candidate in the primary of more than one party." Section 5/7-43 currently does not allow a candidate or voter who participated in the primary with one political party, to be a <u>candidate</u> of another political party for the general election. There is <u>no</u> similar prohibition against participation of a signer of a partisan petition <u>after</u> the primary in order to fill a vacancy in nomination.

In Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed 2d 260, the Supreme Court invalidated 7-43(d) which prohibited voters from changing political parties within a 23-month period. The court held that Section 7-43(d), "was an unconstitutional infringement upon the right of free political association protected by the first and fourteenth amendments." Kusper, at 414 U.S. 51 at 57.

In Sperling v. County Officers Electoral Board, 57 Ill.2d 81 (1974), our Supreme Court said:

"The same reasoning which moved the *Kusper* court to hold invalid the 23-month restriction upon voter changes of political parties is, it seems to us, applicable to the 2-year restriction upon those voters who wish to sign primary petitions, and that restriction too, must fail." *Sperling*, 57 Ill.2d 81 at 84.

"Thus in 1971, the Code barred voters, signers of primary petitions, and condidates from participating in primaries of one political party if they had participated in the primary of another political party within two year." *Cullerton v. DuPage County Officers Electoral Bd.*, 384 III.App.3d 989, 894 N.E.2d 774, 323 III.Dec. 748 (2008), at 992.

Kusper and Sperling changed that 2-year provision for all three categories: voters, voters who sign primary nominating petitions, and voters who wish to be candidates. Cullerton, at 993.

In 1990, the General Assembly enacted P.A. 86-1348, effective September 7, 1990, which removed the restriction that had been stricken in *Sperling* regarding signers of the petitions. The statute was structured to remove the restrictive language and leave the simple sentence that remains today. "A qualified primary elector" of a party may not sign petitions for or be a candidate in the primary of more than one party." P.A. 86-1348, (5/7-10). *Cullerton*, at 994. The Statement of Candidacy restriction applicable to candidates remains in 5/7-10.

The Cullerton court went on to hold that the <u>candidate</u> restriction on party-switching was left intact by Sperling and when 5/7-10 was amended in 1990, the General Assembly left the <u>candidate</u> prohibition of party-switching in the statement of candidacy portion of the statute, but severed the unconstitutional restrictions on party-switching for petition signers. Cullerton, at 997.

The Supreme Court in *Hossfeld v. Illinois State Bd. of Elections*, 238 Ill.2d 418, 939 N.E.2d 368, 345 Ill.Dec. 525 (2010), recognized the deletion in 5/7-10 in P.A. 86-1348 and the fact that, "Since 1990 the General Assembly has not adopted any time restrictions on party-switching by candidates or other definitions of "qualified primary elector." *Hossfeld*, at 427. 428. Also, in P.A. 95-699, §5, eff. Nov. 9, 2007, the General Assembly deleted the no-switch rule applicable to voters formerly contained in 7-43(d).

# The *Hossfeld* court stated:

"...the Election Code no longer contains express time limitations on party-switching and Rauschenberger did not run afoul of the only remaining restriction set forth in both 7-10 and 8-8, that a "qualified primary elector" of a party may not sign petitions for or be a candidate in the primary of more than one party."

See 398 III.App.3d at 744, 338 III.Dec. 228, 924 N.E.2d 88.

There is no restriction from voting in the March 15, 2016 primary as a Democrat and then signing a petition to put a Republican candidate on the ballot for the General Election on November 8, 2016. Certainly, none of the Democratic voters at the primary could be Republican Candidates at the November, 2016 election, but there is nothing to restrict them from signing an opposite party petition after the primary for purposes of putting a candidate on the November 2016 General Election ballot.

- 4. Paragraph eleven (11) of the Objector's Petition is legally insufficient, stating no statutory or case law prohibiting the signing of two nominating petitions for candidates of different parties one in the primary cycle which ended March 15, 2016 and one in the 5/7-61 vacancy cycle ending May 31, 2016. As set forth in paragraph 3 above, nothing in the law prohibits these actions. This paragraph should be stricken.
- 5. The Objector has "double" or triple objected to hundreds of individual lines on the 180 page petition. The objection to a signature not being genuine could not be made if the objection as to the signer not being registered is valid. If the registration card is not on file, then the Objector has not checked the signature of the signer. The Objector makes the objection to the genuineness of signatures and registration status NOT upon "information and belief", but takes an oath and swears that the allegations are true and correct.

The Candidate requests that all "double" objections made in columns A and B to an individual line not be checked for both registration status and genuineness of the signature. No factual research or good faith effort was made in attacking the signature on both grounds. This obvious "shotgun" approach violates due process of law, and is in violation of the mandates of 5/10-8 to plead with specificity. There is no factual basis to making the "double" objection.

6. Electoral boards have continued to require that pleadings generally afford adequate notice or specificity or present some credible evidence to sustain a minimal burden of proof. See, e.g., Brueder v. Schmidt, No. 89-COEB-TC-03 (Cook Cty. Electoral Board 1990); Vojik v. Marinaro, No. 89-COEB-TC-07 (Cook Cty. Electoral Board 1990); Blakemore v. Shore, 11-COEB-MWRD-03 (Cook Cty. Electoral Board 2012). Further, objections challenging all, or virtually all, of the signatures filed, on multiple grounds, that evidence little, if any, reasonable inquiry or investigation and that lack a good-faith basis in law or fact will be dismissed. See, e.g., McCarthy v. Pellett, No. 04-EB-WC-04 (Chicago Electoral Board 2004); Young-Curtis v. Lyle, No. 03-EB-ALD-139 (Chicago Electoral Board 2003). See also Stroud v. Nelson, No. 11-EB-ALD-332 (Chicago Electoral Board 2011), Sutor v. Acevedo, No. 06-EB-RGA-04 (Chicago Electoral Board 2006), Thomas v. Swiss, No. 04-EB-WC-46 (Chicago Electoral Board 2004), Gernhardt v. Fagus, No. 04-EB-WC-83 (Chicago Electoral Board 2004), and Davis v. Hendon, 02-EB-SS-09 (Chicago Electoral Board 2002), in which the Chicago board dismissed objections or certain allegations for failing to meet the requirements of 10 ILCS 5/10-8, i.e., pleading adequate, clear, and sufficient facts.

Here, the Objector has engaged in an obvious "shotgun" approach to his objections when looking at the objection on its face. Again, no factual research or good faith effort was made in attacking the signatures, referenced above, on these grounds.

7. 238 individual lines on the Candidate's 180 page petition sheets have been

objected to with random "x" marks where no signature in fact exists on said lines. (See Ex. B)

8. Objector has made approximately 800 double objections, as referred to in

Paragraph 5, in columns A and B to an individual line with random "x" marks. (See Ex. B)

The random line objections to lines that contain no signatures is *prima facie* proof that <u>no</u>

investigation; no fact finding; and no legal objection has been filed. The challenging of 238

"blank" lines coupled with the 800 "double" objections reflect a "shotgun," non-specific,

untruthful objection that has been sworn to, under oath. The "double" objections should be

stricken, as well as the "no signature" objections.

WHEREFORE, the Candidate, TRACY SMODILLA, respectfully requests that the

Objector's Petition be stricken and dismissed, as set forth above, and the objections overruled.

Respectfully submitted,

TRACY SMODILLA, Candidate

By: /s/Burton S. Odelson

Burton S. Odelson

Burton S. Odelson

Luke J. Keller

ODELSON & STERK, LTD.

3318 West 95th Street

Evergreen Park, IL 60805

(708) 424-5678

(708) 424-5755 - fax

attyburt@aol.com

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Commissioners

MARISEL A. HERNANDEZ, Chairwoman

WILLIAM J. KRESSE

Commissioner

JONATHAN T. SWAIN,

Cammissioner

LANCE GOUGH Executive Director



69 WEST WASHINGTON STREET CHICAGO, ILLINOIS COSO2 (312)259 - 7900 FAX (312)253 - 3549 TTY (312)259 - 0027

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E-mail Address: CBOE@CHICAGOELECTIONS.NET

STATE OF ILLINOIS	)	<b>د</b> د
	,	SS
COUNTY OF COOK	)	

I, Lance Gough, Executive Director of the Board of Election Commissioners in the County and State aforesaid and keeper of the records and files of said Board, do hereby certify that the following named person is a registered voter. This individual is currently registered at the address indicated below:

NAME:

**EDWARD E HANSON** 

ADDRESS:

1338 W WINONA ST 3

CHICAGO, ILLINOIS 60640

**REGISTRATION NO:** 

09501FS

and that a copy of the original registration card and voter change information(if any) is attached, all of which appears from the records and files of said Board.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board at my office in the City of Chicago, this

10th day of <u>June</u> A. D. 2016

LANCE GOUGH
Executive Director

EXHIBIT

Name of person assisting	Full Address Telephone No.
14. It you cannot sign your nieffer hat the person with helped you fill	
refused entry into the United States.	Today's Date: 08 / 25 / 2011
under penalty of perjury, if I have provided false information, then I is be fined, imprisoned, or if I am not a U.S. citizen, deported from or	
30 days as of the date of the next election;  * The information I have provided is true to the best of my knowledge	<b> </b>
<ul> <li>I will have lived in the State of Illinois and in my election precinct at I</li> </ul>	
<ul> <li>1 am a citizen of the United States;</li> <li>1 will be at least 18 years old on or before the next election;</li> </ul>	' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '
I sweet of allow greet	This is my signature or mark in the space below
13. Vole: Afficavit, "Resid all statements and sign within the box to t	the right i
ØM OF	H525-2256-4238
12. Set (Check One)	Last 4 digits of Social Security Number  I have none of the above-listed identification numbers.
08 / 19 / 1964 Including area code (optional)	
2.19 National St., Eigln, IL 60120  9. Total of Bran MMOON 1 10. Home telephone number.	Kans  (D. number, - Shack, the applicable hox and provide the appropriate number.
	odel: /- Former County Former Name (1 Conner)
1338 W. Winons St., #3 Chicago, IL	60640
	SISIG 1
1338 W. Winona St., #3	Chicago 60840 Cook
Hanson Edward E  S. Address where you the House No., Street Name, Apt. No.)	CDy/Village/Town - Zp-Code County Township
The state of the s	DJr. DSr. DII DIV
You clin use this form to: (Check One)	
If you checked "no" in response to either of these questions	A I
Wallyou be 18 years of age un or before election day?	
(Are you a citizen of the United States of America?	(check che); Yes V No Villa to
Fold Line	

Commissioners

MARISEL A. HERNANDEZ, Chairwoman

WILLIAM J. KRESSE,

Commissioner

IONATHAN T. SWAIN, Commissioner

LANCE GOUGH Executive Director



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#### Changes for 09501FS - EDWARD E HANSON

Control of the Contro			A CONTRACTOR OF THE PROPERTY OF THE PARTY OF
√oter Status	A	I	09/04/2013
Voter Status2		c	09/04/2013
n_person_ind	Y	N	04/18/2012
driver_tic_number			09/08/2011

**Commissioners** 

MARISEL A. HERNANDEZ, Chalrwoman

WILLIAM J. KRESSE,

Commissioner

IONATHAN T. SWAIN, Commissioner

LANCE GOUGH Executive Director

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## Histories for 09501FS - EDWARD E HANSON

)3/20/2012	Democratic	Early Voting

Sheet #	Not Objected	Multiple Objections (a+b)	Only A	Only B	Total Signatures	Total Objections	Objections without Signatures
1	11	4	0		<del></del>	4	
2	3		4	· · · · · · · · · · · · · · · · · · ·	<del></del>	12	
3	1	8	2	<del></del>	15	14	
4	10	1	0		15	5	-
5	13	0	0			2	
6	13	0	0	<del></del>	15	2	
7	13	0	0		15	2	
8	13	0	0			2	
9	7	1	1	6	14	7	
10	10	2:	0	0	12	2	
11	0.	1'	6	0	11	11	
12	7	0	1	0	8	1	
13	6	0	0	0	6	0	
14	3.	0	0	1.	4	1	
15	3	0	1	0	3	0	1
16	. 0	1	1	01	3	3	1
17	4	0	0	0	4	0	1
18	3	Ö	0	0	. 3	0	1
19	13	1	0	0	14	1	
20	11	1	0.	1	14	3	
21	6	1	0	0	7	1	
22	8	3	2	1	14	6	
23	9	4	0	0	13	4	
24	5	8	0	1	14	9,	
25	1	1	1	3	10	9	
26	11	2	0	1	15	4	
27	1	4	0	0	5	4	1
28	5	4	0	1	10	5	
29	1	5	0	0	6	5	
30	5	6	0	2	15	10	
31	8	3	2	2	15	7	
32	1	0	0	0	1	0	14
33	8	5	0	0	15	7	
34		3	0	0	13	5	
35	5	4	0	4	14	9	
36	2	2	0	0	3	1	1.
37	0.	0	0	2	2	2	1
38	1	1	0	0	2	1	1;
39	3		1	3	15	12	(
40	4	0	0	2	7	3	
41	4	2	0	1	7	3	
42	10	1	0	4	15	5	
43	13	1	0	1	15	2	
44	5	8	0	0	15	10	(
45	8	1	0		15	7	
46	10	2	0	3	15	5	(
47	11	1	0	3	15	4	(
48	3	4	0	7	15	12	(
49	9	2	0	3	15	6	(
50	10	2	0	1	15	5	(



51	9	4	0	1	15	6	0
52	9			0	15	<del></del>	0
53	8	<del></del>		2	15	7	0
54	4			1	15		0
55	10			2	15	5	0
56	8		1	0	13		2
57	1		1	1	15	14	0
58	1			0	15	14	0
59	0		3	0	15	15	0
60	0		2	0	15	15	0
61	1			1	15	14	0
62	2		6	0	15	13	o
63	1				15		0
64				0	6		9
			0	0			
65	9		0	3	15	6	0 5
66	5		0	2	10	5	4
67	3	3	2	0	11	8	
68	2	2	2	0	15	13	0
69	5	7	3	0	1.5	10	0
70	. 2	5	0	3	15	13	0.
71	5	6	0	2	15	10	0
72	4	. 4	0	3	15	11	0
73	2	3	4	1	15	13	0
74	S	4	2	1	15	10	0
75	6	4	1	2	15	9	0
76	1	7	1	0	14	13	1
77	3	8	1	1	15	12	0
78	2	3	6	1	15	13	. 0
79	3	0	9	0	15	12	0
80	3	7	5	0	15	12	0
81	1	1	9	0	15	14	0
82	2	10	1	0	15	13	0
83	14	1	0	0	15	1	0
84	1.	11	2	0	15	14	0
85	2	2	7	0	14	12	1
86	3	2	7	0	15	12	0
87	1	13	. 0	0	15	14	0
88	2	7	2	1	15	13	0
89	3	0	5	1	15	12	0
90	3:	2	6	1	15	12	0
91	3	4	3	1	15	12	0
92	2	4	3	2	15	13	0
93	3	4	6	2	15	12	0
94	3	8	. 0	3	15	12	0
95	2	6	4	0	15	13	0
96	2	3	4	0	15	13	0
97	1	6	3	0	14	13	1
98	3	2	6	0	15	12	0
99	3	2	5	1	15	12	0
100	1	5	8	1	15	14	0

101	1	8	3	1	15	14	0
102	3		0	0	15	12	0
103	3	5	3	0	15	12	0
104	1	5	7	2	15	14	0
105	2	7	6	0	15	13	0
106	0	12	1	0	15	15	0
107	2	4	8	0	15	13	0
108	0	9	4	1	15	15	0
109	1	9	3	0	15	14	0
110	1	6	2	1	15	14	0
111	1	8	4	0	15	14	0
112	3	5	5.	0	15	12	0
113	1	2	10	0	15	14	0
114	2	10	1	1	15	13	0
115	4	10	9	0	15	11	0
116	1	9	1	2	15	14	0
117	1	6	4	2	15	14	0
117		3	6	2	15	15	o
119	6	6	3	0	15	9	0
120	0	5	6	1	14	14	1
121	1.	1	6	0	14	13	1
		4	2	1	15	13	0
122	2		1	1	15 15	14	0
123	1	6	1	1	15	13	0
124	2	7	2	1	15	12	0
125	3			3	15	14	0
126	1	8	1		15	14	0
127	1	3	0	1	15	10	0
128	5	5.	1	0		14	0
129	1	6	1	1	15		0
130	2	8	4	1	15	13 13	0
131	2	7	4	0	15		0
132	4	<del></del>	6	0	15	11	0
133	2	1	6	0	15	13	
134	1	1	11	0	14	13	1
135	1	3	6	1	14	13	1
136	4.	5	4	0	15	11	0
137	3.	4	3	1	14	11	1
138	1	3	6	4	15	14	0
139	1	5	8	0	15	14	0
140	0	7	4	0	15	15	0
141	2	2	10	0	15	13	0
142	1	2	7		15	14	
143	5		4	0	15	10	0
144	3	5	3	2	15	12	0
145	3		3	3	15	12	0
146	1		5	1	. 15	14	0
147	1	8	3	1	15	14	0
148	1	5	5	2.	15	14	0
149	4	4	2	1	15	11	0
150	0	10	2	1	15	15	0
151	2		2	0	15	13	0
152	1	11	3	0	15		
153	1	3	9	1	15	14	0 0 0
154	1	7	5	0	15	14	0
155	0	2	12	1	15	15	0
1			-				

TOTAL	648	799	477	176	2460	1812	238
180	2	2	6	1	15	13	0
179	4	2	6	0	15	11	0
178	0	5:	5	3	15	15	0
177	0	3	4:	2	15	15	0
176	1	9	2	1	14	13	1
175	3	5	4	1	15	12	0
174	5	4	0	1	15	10	0
173	4	5	0	Ö	15	11	0
172	9	4	1	0	15	6	0
171	0	0	0	. 0	2	2	13
170	3	4	2	1	15	12	0
169	7	1	5	9	15	8	0
168	3	5	0	4	15	12	0
167	7	2	3	0	15	8	0
166	5.	4	1	. 0	15	10	0
165	1	4	1	0	15	14	0
164	1	4	2	1	15	14	0
163	4	4	0	2	15	11	0
162	0		4	1	15.	15	0
161	1	9	4	0	14	13	1
160	1	7	6		15	14	0
159	1	11	9	0	14	13	1
158	1	8		0	15	14	0
156 157	0	9	7	0	15 15	15 15	0

Total Objections w/o
Not Objected Multiple (A+B) Only A Only B Total Sigs Objections Sigs

# BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

EDWARD HANSON	)
Petitioner/Objector,	)
Vs.	
TRACEY SMOLDILLA	) ) No. 2016-S0EB 100
Respondent/Candidate.	) No. 2010-30LD 100

#### FINDINGS AND RECOMMENDATIONS

#### PROCEDURAL HISTORY

Following the March 15, 2016 primary election, there was no Republican Party Candidate nominated to run in the 2016 general election for the office of State Office of State Senator for the 22<sup>nd</sup> Legislative District Representative District. To fill the vacancy the Respondent/Candidate was selected by officials of the Republican Party to be placed in nomination (See 10 ILCS 5/7-60 et. seq.).

However, to be placed on the ballot, the Candidate needed to submit nominating petitions containing 1,000 "qualified primary electors residing in the political division for which the nomination is sought" (10 ILCS 5/7-10).

The Candidate thereafter filed petitions containing 2,469 signatures.

The Petitioner/Objector filed an objection to the nominating petitions alleging legal and factual deficiencies in the submitted nominating petitions.

On June 13, 2016, the Electoral Board appointed Philip Krasny as the Hearing Examiner to conduct a hearing on the objections to the nominating petitions and present recommendations to the Electoral Board

An initial case management conference was held on June 13, 2016, which was

attended by Michael Kasper and Kevin Morphew, attorneys for the Objector. The Candidate was represented by Burt Odelson. At the case management conference an order was entered which, inter alia, gave the parties specified times to file motions and requests for issuance of subpoenas.

The Candidate filed a "Motion to Strike and Dismiss". No Response was filed.

A record examination was completed on June 16, 2015 at which time it was found that, out of 1,693 objections, the Record Examiners found that the Candidate had 1,198 invalid signatures and 495 valid signatures; thereby resulting in 1,271 valid signatures, 271 more than required by statute.

Following the records exam, the Candidate filed a "Motion to Extend Time to File Evidence and Proofs Pursuant to Rule 9". The motion was taken under advisement. The Candidate thereafter filed a "Motion to Reconsider and Overrule Recommendation of Record Clerk Pursuant to Rule 9"

The Objector timely filed "Rule 8" material with the Electoral Board, but failed to deliver copies of the materials to the Hearing Examiner or the Candidate. Thereafter, the Candidate filed a "Motion to Strike Objector's Rule 8 Motion"

A hearing was held on June 23, 2016 at the offices of the SBOE in Chicago. The Objector was represented by Michael Kasper and Kevin Morphew. The Candidate was represented by Burt Odelson.

# RECOMMENDATION MOTION TO DISMISS

The Candidate's Motion to Strike and Dismiss seeks to dismiss those objections in which the Objector has challenged the signatures of persons who had allegedly voted in the 2016 Democratic Party primary election and thereafter signed the Candidate's nominating petition to run in the general election as a Republican for the office of State Office of State Senator of

the 22<sup>nd</sup> Legislative District Representative District. Succinctly put, the Candidate's Motion alleges that the Illinois Election Code no longer restricts an individual who votes in one established party's primary from subsequently signing the nomination petition for a candidate of another party. Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303 (1973), Sperling v. County Officer's Electoral Board, 57 Ill.2d 81, 309 N.E.2d 589 (1974) and Hossfeld v. v. Ill. State Bd. of Elections, 398 Ill. App. 3d 737, 338 Ill. Dec. 228, 924 N.E.2d 88 (2010),

Your Hearing Officer agrees with the Candidate and recommends that the Motion to Dismiss be granted. (See Hearing Examiner's Recommendation in Corneils and Frasz v. Burd 16 SOEB 101)

#### HEARING

At the hearing, the Candidate moved to have the "Rule 8" motion dismissed because the supporting documents were not submitted to the Candidate or Hearing Examiner. The Objector argued that the motion should be denied because the documentation was timely filed with the Board, which met the requirements of the Rules of Procedure.

Your Hearing Examiner recommends that the Motion to Exclude the "Rule 8" materials filed with the Board, but not submitted to the Candidate or Hearing Examiner, be granted, since the June 13, 2016 order entered by your Hearing Examiner directed all parties to send all motions, responses and replies to opposing parties. Additionally, it should be noted that it has long been the custom and practice for litigants experienced in election law litigation to provide copies of Rule 9 materials to the opposing party so that the expedited nature of these proceedings would continue unimpaired.

However, even if the Election Board decides not to follow the Hearing Examiner's recommendation to exclude the "Rule 8 material", it appears that a majority of the objections

raised in the "Rule 8" motion and supporting material pertain to a signer voting in the Democratic primary and then signing the Candidate's petition. Once subtracting all of those objections and, assuming that all of the remaining challenged signatures would be sustained, the parties agree that the Candidate would still have in excess of the 1000 required signatures

# RECOMMENDATION

Accordingly, it is the Hearing Examiner's recommendation that the Candidate's name appear on the ballot as the Republican Candidate for the office of State Office of State Senator for the 22<sup>nd</sup> Legislative District Representative District.

Respectfully Submitted

Philip Krasny

6/27/16

Hearing Officer

# Corneils/Frasz v Burd 16 SOEB GE 101

Candidate: Valerie L. Burd

Office: 50th State Representative

Party: Democratic

**Objectors:** Russell August Corneils and Andrew Frasz

Attorney For Objectors: John Fogarty

Attorneys For Candidate: Michael Kasper and Kevin Morphew

Number of Signatures Required: 500

Number of Signatures Submitted: 663

Number of Signatures Objected to: 103

**Basis of Objection:** The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," "Signer Signed Petition More than Once" and "Signer Voted in the 2016 Republican Primary."

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss Objectors' Petition, Objectors' Response to Candidate's Motion to Strike and Dismiss

Binder Check Necessary: Yes

Hearing Officer: Phil Krasny

**Hearing Officer Findings and Recommendations**: A records examination commenced and was completed on June 16, 2016. The examiners ruled on objections to 103 signatures. 52 objections were sustained, leaving 611 valid signatures, which is 111 signatures more than the required minimum number of 500 signatures.

In the Motion to Dismiss, the Candidate alleges that the objections to the signatures of persons who allegedly voted in the 2016 Republican primary and subsequently signed the Candidate's (Democratic) nominating petition should be dismissed because there is no prohibition in the Illinois Election Code against the same. The Objectors respond by arguing that those persons who had voted in the 2016 Republican primary could not be "qualified primary electors" of the Democratic party for the 2016 election cycle due to Section 7-44 of the Election Code, which prohibits an individual from voting in both parties' primaries.

The Hearing Examiner recommends that the Motion to Dismiss be granted, based in part upon the 2010 *Hossfeld* case, in which the Illinois Supreme Court traced the history of the cases and statutes related to party-switching. The Hearing Examiner concludes from that review that while an individual would likely be prohibited from *running* as a Democratic candidate in the same primary cycle in which he took a Republican ballot, there is no statutory restriction preventing a voter from *signing* the nomination petition of a candidate being placed in nomination by the Democratic party for the general election, even if the signer had chosen a Republican ballot in the primary election.

The Hearing Examiner finds further support to dismiss the objection in both legislative history (Section 7-43) and in Section 3-1.2 of the Election Code, which states that as long as the voter signing the nomination petition is registered to vote at the address shown opposite his signature on the petition, or was registered to vote at such address when he signed the petition, he is a "qualified primary elector": thus, the language "qualified primary elector" does not prevent a voter from signing the nomination petition of a candidate running to fill a vacancy of one party, even though the same voter chose the ballot of the opposing party in the primary.

The parties stipulated that the objector presented Rule 9 documentation establishing that, in addition to the 52 signatures found to be invalid at record examination, 109 persons signing the Candidate's nominating petition had selected a Republican primary ballot. The parties were unable to agree on whether 9 additional persons signing the Candidate's ballot had selected a Republican primary ballot; the Hearing Examiner reviewed the documentation submitted and sustained 4 of the objections and overruled 5 of the objections.

If the Electoral Board follows the Hearing Examiner's recommendation to grant the motion to dismiss the objection, then the Candidate has in excess of 500 valid signatures and the Hearing Examiner accordingly recommends that the Candidate's name be certified for the ballot as the Democratic Candidate for the office of State Representative for the 50<sup>th</sup> Representative District.

(To the extent the Board declines to follow the Hearing Examiner's recommendation, the Candidate would have only 498 signatures and her name accordingly should not appear on the ballot.)

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 50th REPRESENTATIVE DISTRICT IN THE STATE OF ILLINOIS

Russell August Corneils and Andrew Frasz,	)
Petitioner-Objectors,	ORIGINAL ON FILE AT
vs.	ORIGINAL TIME STAMPED
Valerie L. Burd,	AT 2:39 PM Dune 7+4,20/6
Respondent-Candidate.	) )

# **VERIFIED OBJECTORS' PETITION**

Now come Russell August Corneils and Andrew Frasz (hereinafter referred to as the "Objectors"), and state as follows:

- 1. Russell August Corneils resides at 107 N. Conover Ct., Yorkville, Illinois 60560, in the 50<sup>th</sup> Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Nomination and Election to the Office of Representative in the General Assembly from the 50<sup>th</sup> Representative District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.
- 2. Andrew Frasz resides at 1N545 Brundige Road, Elburn, Illinois 60119, in the 50<sup>th</sup> Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Nomination and Election to the Office of Representative in the General Assembly from the

50<sup>th</sup> Representative District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

- 3. Your Objectors makes the following objections to the nomination papers of Valerie L. Burd ("the Nomination Papers") as a candidate for the Office of Representative in the General Assembly from the 50<sup>th</sup> Representative District of the State of Illinois, and file the same herewith, and state that the said Nomination Papers are insufficient in law and in fact for the following reasons:
- 4. Your Objectors state that in the 50<sup>th</sup> Representative District of the State of Illinois the signatures of not less than 500 duly qualified, registered, and legal voters of the said 50<sup>th</sup> Representative District of the State of Illinois are required to be duly filed as part of a candidate's nomination papers. In addition, said nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

# The Candidate Has An Insufficient Number Of Signatures To Qualify For Office

- 5. Your Objectors state that the Candidate has filed 72 petition signature sheets containing 659 signatures of allegedly duly qualified, legal, and registered voters of the 50<sup>th</sup> Representative District of the State of Illinois.
- 6. Your Objectors state that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.
- 7. Your Objectors further state that the aforesaid Nomination Papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 50<sup>th</sup> Representative District of the State of Illinois

and their signatures are therefore invalid, as more fully set forth in the Appendix Recapitulation under Column A designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

- 8. Your Objectors further state that the said Nomination Papers contain the names of numerous persons who have signed said petition but who are not, in fact, duly qualified, registered, and legal voters at addresses that are located within the boundaries of the 50<sup>th</sup> Representative District of the State of Illinois as shown by the addresses they have given on the petition, as more fully set forth in the Appendix-Recapitulation under Column B designated "SIGNER RESIDES OUTSIDE DISTRICT" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.
- 9. Your Objectors further state that the said Nomination Papers contain the names of numerous persons who did not sign the said Nomination Papers in their own proper persons, and that the said signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under Column C designated "SIGNATURE NOT GENUINE / NOT SIGNED BY PROPER PERSON" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.
- 10. Your Objectors further state that said Nominating Papers contain the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation, under Column D designated "SIGNED PETITION TWICE" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

- Your Objectors state that various purported signatures are legally defective and deficient in that said signers are not qualified primary electors of the Democratic Party, as said purported signers voted in 2016 Republican Primary Election, as more fully set forth in the Appendix-Recapitulation, under Column E designated "SIGNER VOTED IN ANOTHER PARTY ELECTION IN MARCH 2016 PRIMARY" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.
- 12. Your Objectors state that the Nomination Papers contain various purported signatures that are legally defective and deficient in that those individuals so signing signed a nominating petition for a candidate of another established political party prior to signing the Candidate's petition, as more fully set forth in the Appendix-Recapitulation, under Column F designated "SIGNER PREVIOUSLY SIGNED PETITION OF ANOTHER ESTABLISHED PARTY CANDIDATE" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.
- 13. Your Objectors state that the Nomination Papers herein contested consist of various sheets supposedly containing the valid and legal signatures of 659 individuals. The individual objections cited herein with specificity reduce the number of valid signatures to below the statutory minimum of 500.

WHEREFORE, your Objector prays that the purported Nomination Papers of Valerie L. Burd as a candidate for the Office of Representative in the General Assembly for the 50<sup>th</sup> Representative District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Valerie L. Burd as a candidate for the Office of Representative in the General

Assembly for the 50<sup>th</sup> Representative District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT at the General Election to be held on November 8, 2016.

Respectfully submitted,

Russell August Corneils, OBJECTOR

Andrew Frasz, OBJECTOR

# **VERIFICATION**

The undersigned as Objector, first being duly sworn on oath, now deposes and says that [he] [she] has read this VERIFIED OBJECTORS' PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [he] [she] verily believes the same to be true and correct. Andrew Frasz, OBJECTOR County of \_ SS. State of Illinois Subscribed to and Sworn before me, a Notary Public, by Objector, on this the 50 day of June, 2016, at Illinois. (SEAL) DAVID D KRAHN NOTARY PU OFFICIAL SEAL Notary Public, State of Illinois

My Commission expires:

My Commission Expires
November 06, 2017

# **VERIFICATION**

The undersigned as Objector, first being duly sworn on oath, now deposes and says that [he] [she] has read this VERIFIED OBJECTORS' PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [he] [she] verily believes the same to be true and correct

Russell August Corneils, OBJECTOR

County of Kerden ) ss.
State of Illinois )

NOTARY PUBLIC (SEAL)

My Commission expires: \(\(\lambda\right)\)\(\ta\)

DAVID D KRAHN
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
November 06, 2017

# BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 50<sup>TH</sup> REPRESENTATIVE DISTRICT IN THE STATE OF ILLINOIS

Russel	August Corneils and Andrew Frasz,	)	
	Petitioner-Objectors,	)	
	v.	)	No. 16 SOEB GE 101
Valerie	L. Burd,	)	
	Respondent-Candidate.	)	

# CANDIDATE'S MOTION TO STRIKE OBJECTORS' PETITION

NOW COMES Respondent-Candidate Valeric L. Burd ("Candidate"), by and through her attorneys Michael J. Kasper and Kevin M. Morphew, and respectfully states as follows:

- 1. Candidate has timely filed nomination petitions with the Illinois State Board of Elections to fill a vacancy in nomination as the Democratic Party candidate for the office of Representative in the General Assembly for the 50th Representative District at the 2016 General Election.
- 2. Petitioner-Objectors Russel August Corneils and Andrew Frasz ("Objectors") filed a Verified Objectors' Petition to contest the validity of Candidate's nomination petitions on June 7th, 2016.
- 3. Section 5/10-8 of the Election Code sets forth the requirements for an Objector's Petition. A petition must state fully the nature of the objections to the nomination papers and state what relief is requested of the electoral board. 10 ILCS 5/10-8 (West 2016).
- 4. Certain paragraphs of Objectors' Petition allege facts that, even if true, present insufficient legal grounds to sustain the objections therein.

- 5. Paragraph 11 of Objectors' Petition alleges that certain signatures are invalid because the signers voted in the 2016 Republican Primary Election. As discussed more fully below, the Illinois Election Code does not prohibit voting in the Republican Primary Election and thereafter signing a petition for a different political party.
- 6. Paragraph 12 of Objectors' Petition alleges that certain signatures are invalid because the signers also signed a nomination petition of another established party prior to signing the Candidate's Petition. As discussed more fully below, there is no prohibition in the Illinois Election Code against signing an established political party's petition in a primary election and subsequently signing a different established party candidate's nomination petitions for a general election in the same election cycle.

## ARGUMENT

A. Paragraph 11 of Objectors' Petition has no basis in law and fails to state a claim for which relief can be granted.

The Objectors' Petition alleges in Paragraph 11 that certain signatures in Candidate's nomination petitions are invalid because the signers previously voted in the 2016 Republican Primary Election. However, the Illinois Election Code no longer restricts an individual who votes in one established party's primary from subsequently signing the nomination petition for a candidate of another party. Thus, Paragraph 11 of the Objectors' Petition is legally deficient, and must be stricken for failing to state a claim for which relief may be granted.

In Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303 (1973), the Supreme Court of the United States struck down the Illinois law restricting party-switching by voters. Prior to 1973, "a qualified primary elector" was defined as "an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed." Ill.Rev.Stat.1971, Ch. 46, par. 8-8. The Kusper Court determined that this restriction

unconstitutionally infringed on the voters right of free political association because a voter who wished to change affiliation would have to wait nearly two years to switch political parties.

The next year, the Illinois Supreme Court decided *Sperling v. County Officer's Electoral Board*, 57 Ill.2d 81, 309 N.E.2d 589 (1974). In *Sperling*, the Court applied the reasoning in *Kusper* in order to invalidate the Election Code's two-year no-switch rules that were applicable to voters who wish to sign primary nomination petitions and candidates in primary elections. 57 Ill.2d at 84. As a result of these decisions and the subsequent repeal of these statutory provisions, the Illinois Supreme Court concluded as recently as 2010 that "no vestige of the former party-switching rule remains in statute." *Hossfeld v. Illinois State Board of Elections*, 238 Ill.2d 418, 428, 939 N.E.2d 368, 373 (2010).

In this case, it is alleged that certain individuals who signed Candidate's petitions to appear on the ballot as the Democratic Party's nominee had previously voted in the March 2016 Republican Primary Election. After the Primary Election, Candidate circulated her petitions and obtained the voters' signatures. Since there is no longer a time restriction on when an voter may switch parties following a primary election, the voters were free to switch parties at any point after they participated in the March 2016 Primary Election.

There is no express prohibition against voting in one party's primary election and subsequently signing the nomination petitions of a candidate of another political party in the Illinois Election Code. Under Section 8-8, the signers in question were permitted to sign Candidate's nomination petitions notwithstanding the fact that they had voted in the previous primary election of another established party. Therefore, Paragraph 11 of Objectors' Petition is legally deficient and must be struck in its entirety.

B. Paragraph 12 of Objectors' Petition has no basis in law and fails to state a claim for which relief can be granted.

The Objectors' Petition alleges in Paragraph 12 that certain signatures on Candidate's nomination petitions are invalid because the individuals signed another established party's nomination petition to appear on the ballot at the 2016 Primary Election. However, the Election Code contains no such prohibition on signers for candidates seeking to appear on the ballot for the General Election. Section 8-8 of the Election Code, which governs the form of petition for nomination for candidates of the General Assembly, only states that "A 'qualified primary voter' of a party may not sign petitions for or be a candidate *in the primary* of more than one party." 10 ILCS 5/8-8 (West 2016) (emphasis added). Moreover, the Illinois Supreme Court in *Sperling*, as detailed above, expressly struck any prohibition in the Election Code on party-switching for voters who wish to sign primary nomination petitions. 57 Ill.2d at 84. A plain reading of Section 8-8 makes it clear that the prohibition on a 'qualified primary voter' who signs petitions for more than one party applies only to *primary elections*.

In this case, Candidate's nomination petitions and Statement of Candidacy make it clear that she is seeking to appear on the ballot for the General Election to be held on November 8, 2016. Further, Candidate did not seek nomination or circulate petitions for office at the Primary Election, which took place on March 15, 2016. Therefore, the prohibition against signing petitions in the primary of one or more party does not apply to Candidate's nomination petitions for the General Election.

There is no express prohibition against signing another established party's petition in a Primary Election and subsequently signing a different established party candidate's nomination petitions for a General Election in the Illinois Election Code. Under Section 8-8, the signers in question were permitted to sign Candidate's nomination petitions for the General Election

notwithstanding the fact that the signers also previously signed a petition of another established party candidate for the previous Primary Election. Therefore, Paragraph 12 of Objectors' Petition is legally deficient and must be struck in its entirety.

Other electoral boards have ruled that this objection is not valid. For example, the Will County Officers Electoral Board found in *Schauer v. Harris*, 14-RGA-1, WCEB, July 2, 2014, Paragraphs 19, 23, that there is "no longer a prohibition against a voter signing a petition for one political party prior to the primary election and a different political party after the primary election and that there is also no "prohibition against a voter voting in one party's primary, and subsequently signing the nominating petition for a candidate of another party."

WHEREFORE, for the foregoing reasons, Respondent-Candidate respectfully prays that the Electoral Board grant this Motion to Strike paragraphs 11 and 12 of the Objectors' Petition.

Respectfully submitted,

Valerie L. Burd Respondent-Candidate

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By:\_

One of her Attorneys

Michael J. Kasper 222 N. LaSalle, Suite 300 Chicago, IL 60601 312.704.3292 mjkasper60@mac.com Atty. No. 33837

Kevin M. Morphew, Of Counsel kmmorphew@sorlinglaw.com Atty. No. 49365

## BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

RUSSEL AUGUST CORNEILUS and	
ANDREW FRASZ	)
	)
Petitioner/Objector,	)
·	)
Vs.	)
	)
VALERIE L. BURD	)
	) No. 2016-S0EB 10
Respondent/Candidate.	)
	)

#### FINDINGS AND RECOMMENDATIONS

#### PROCEDURAL HISTORY

Following the March 15, 2016 primary election, there was no Democratic Party candidate chosen to run in the 2016 general election for the office of State Office of Representative in the General Assembly for the 50<sup>th</sup> Representative District. To fill the vacancy, the Respondent/Candidate was nominated by officials of the Democratic Party to be placed in nomination (See 5/7-60 et. seq.) "The Making of Nominations by Political Parties".

However, to be placed on the ballot, the Candidate needed to submit nominating petitions containing 500 "qualified primary electors residing in the political division for which the nomination is sought" (10 ILCS 5/7-10)

The Candidate has filed petitions containing 663 signatures.

The Petitioner/Objector filed an objection to the nominating petitions alleging legal and factual deficiencies in the submitted nominating petitions.

On June 13, 2016, the Electoral Board appointed Philip Krasny as the Hearing Examiner to conduct a hearing on the objections to the nominating petitions and present

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recommendations to the Electoral Board.

An initial case management conference was held on June 13, 2016, which was attended by Michael Kasper and Kevin Morphew, attorneys for the Candidate. The Objector was represented by John Fogarty. At the case management conference, the parties were given time to file motions and requests for issuance of subpoenas.

The Candidate filed a Motion to Strike specified paragraphs of Objector's Petition.

The Objector filed a Response.

A record examination was completed on June 16, 2015, at which time it was found that, of the 103 objections, the Record Examiners found that the Candidate had 52 invalid alguatures and 51 valid signatures; thereby resulting in 611 valid signatures, 111 more than required by statute.

Subsequent to the record examination, the Objector filed a Rule 9 motion with supporting documentation.

A hearing was held on June 23, 2016 at the offices of the SBOE in Chicago. The Candidate was represented by Michael Kasper and Kevin Morphew. The Objector was represented by John Fogarty.

#### RECOMMENDATIONS

#### Motion To Dismiss

In her Motion to Dismiss, the Candidate alleges that the objections to the signatures of persons identified in paragraphs 10 and 11 of the Objector's petition,; i.e.; those persons who allegedly voted in the 2016 Republican primary election and subsequently signed the Candidate's nominating petition, should be dismissed, since there is no prohibition in the Illinois Election Code against a voter subsequently signing the nominating petition of a Candidate of another party once the primary election is over. Sperling v. County Officer's Electoral Board, 57 Ill. 2d 81, 309 N.E.2d 589 (1974) and Hossfeld v. v. Ill. State Bd. of Elections, 398 Ill. App. 3d 2

737, 338 Ill. Dec. 228, 924 N.E.2d 88 (2010).

In their Response, the Objectors argue that those persons identified in paragraphs 11 and 12 are not "qualified primary electors" of the Democratic Party for the 2016 election cycle because they had, within the same primary cycle, voted in the 2016 Republican Primary. (Hossfeld, 238 III.2d at 429 (2010); Cullerton v. DuPage County Officers Electoral Bd., 384 III.App.3d 989 (2nd Dist. 2008)).

The Objector points to § 7-44 of the Election Code which prohibits an individual from voting on both parties' primaries, stating that "no person declaring his affiliation with a statewide established political party may vote in the primary of any other statewide political party on the same election day." 10 ILCS 5/744. Thus, Objectors contend that if an individual has voted in the Republican Party Primary in 2016, he or she cannot at the same time have voted in the Democratic Party Primary, and therefore cannot be considered to be a "qualified primary elector" of the Democratic Party.

Your Hearing Officer recommends that the Motion to Dismiss be granted. In making its recommendation, your Hearing Examiner acknowledges that the Supreme Court of the United States in *Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303 (1973), struck down the Illinois Iaw restricting party-switching by voters, which provided that "a qualified primary elector" was defined as "an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed." III. Rev.Stat.1971, Ch. 46, par. 8-8. The *Kusper* Court determined that this restriction unconstitutionally infringed on the voters right of free political association because a voter who wished to change affiliation would have to wait nearly two years to switch political parties.

Based on Kusper, the legislature struck the 2 year "locked in" language in the statute.

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However, the legislature left the following language intact, "a 'qualified primary elector' of a party may not sign petitions for or be a candidate in the primary of more than one party". (See § 10 ILCS 5/8-8).

A review of Hossfeld v. Ill. State Bd. of Elections, 398 Ill. App. 3d 737, 924 N.E.2d 88, (2010) is helpful in ascertaining the issue here; i.e.; whether a person who took a Republican ballot in the primary election is precluded from signing a nominating petition for a Candidate in the Democratic Party after the primary has been held, but before the general election. In Hossfeld the Supreme Court, traced the history of the cases and statues related to party switching and noted as follows:

Historically, the Election Code contained a two-year restriction on party-switching applicable to voters, signers of nomination petitions, and candidates. See generally *Sperling*, 57 III. 2d at 81-82. Specifically, under section 7-43(d), a person was not entitled to vote at a primary election if he had voted at the primary election of another political party within the preceding 23 months. III. Rev. Stat. 1971, ch. 46, par. 7-43(d). Section 7-10 contained a similar restriction applicable to signers of nominating petitions for primary elections and candidates for nomination in such primary elections. Section 7-10 required that nominating petitions shall be signed by "qualified primary electors," and that candidates, in their nomination petitions, must swear that he or she "is a qualified primary voter of the party to which the petition relates." III. Rev. Stat. 1971, ch. 46, par. 7-10.

For purposes of determining eligibility to sign a nomination petition or to be a candidate, section 7-10 provided, in relevant part, that a "qualified primary elector" of a party "is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed." Ill. Rev. Stat. 1971, ch. 46, par. 7-10.[fn3]

The restrictions on party-switching set forth in section 7-10 were mirrored in article 8 of the Election Code, which governs nominations of members of the General Assembly. Section 8-8 required a candidate to swear, in his or her statement of candidacy, that he or she is a "qualified primary voter of the party to which the petition relates." For purposes of determining eligibility to sign a nomination petition or to be a candidate under article 8, a "qualified primary elector" was defined in relevant part as "an elector who has not

requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed." Ill. Rev. Stat. 1971, ch. 46, par. 8-8.

In Kusper v. Pontikes, 414 U.S. 51, 38 L. Ed. 2d 260, 94 S. Ct. 303(1973), the Supreme Court held that the restriction against party-switching by voters contained in section 7-43(d) unconstitutionally infringed on the right of free political association protected by the first and fourteenth amendments. The Court explained that a voter who wished to change his party affiliation must wait almost two years before that choice will be given effect, and is forced to forgo participation in any primary elections occurring within the 23-month statutory hiatus. "The effect of the Illinois statute is thus to 'lock' the voter into his pre-existing party affiliation for a substantial period of time following participation in any primary election, and each succeeding primary vote extends this period of confinement." Kusper, 414 U.S. at 57,38 L. Ed. 2d at 267, 94 S. Ct. at 308.

One year after the *Kusper* decision was entered, this court decided the *Sperling* case. There we held that, based upon the reasoning in *Kusper*, the two-year no-switch rule applicable to voters who wish to sign primary nominating petitions, set forth in section 7-10, must fall. *Sperling*,57 lll. 2d at 84.

In Sperling, we also considered the continuing viability of the two-year no-switch rule applicable to candidates in primary elections. We observed that the "standards governing party changes by candidates should be more restrictive than those relating to voters generally," and that "the restriction on candidates could be upheld against constitutional challenge." Sperling, 57 lll. 2d at 84, 86. We concluded, however, that because the party-switching restrictions upon the three categories of voters are so closely related, the General Assembly would not have enacted the portion relating to candidates apart from some restrictions upon voters generally, and upon voters who sign primary nomination petitions. Sperling, 57 lll. 2d at 86. "In these circumstances the restrictions upon candidates cannot be considered independent and severable from the invalid portions of the plan." Sperling, 57 lll. 2d at 86. This court later clarified that, in the absence of amendatory legislation, the effect of the decisions in Kusper and Sperling was to "render inoperable" the two-year party-switching restrictions. Dooley v. McGillicudy, 63 lll. 2d 54, 60 (1976).

In 1990, the General Assembly amended sections 7-10 and 8-8 of the Election Code. See Pub. Act 86-1348, § 2, eff. September 7, 1990. Though retaining the requirement that a candidate must swear that he or she is a "qualified primary voter of the party to which the nomination petition relates," the General Assembly deleted the definition of "qualified primary elector." In so doing, the General Assembly deleted the two-year no-switch rule. After amendment, sections 7-10 and 8-8 stated simply that "[a] 'qualified primary elector' of a party may not sign petitions for or be a candidate in the primary of more than one

party." Pub. Act 86-1348, § 2, eff. September 7, 1990. Since 1990, the General Assembly has not adopted any time restrictions on party-switching by candidates or other definition of "qualified primary elector." More recently, the General Assembly deleted the noswitch rule applicable to voters set forth in section 7-43(d), which the *Kusper* opinion found unconstitutional. See Pub. Act 95-699, § 5, eff. November 9, 2007. Thus, no vestige of the former party-switching rule remains in the statute.

Against this backdrop, the appellate court decided the *Cullerton* case in 2008. At issue was whether Thomas Cullerton was a "qualified primary voter of the Democratic Party" for purposes of section 7-10 of the Election Code. Cullerton had voted a Republican ballot in the February 2008 general primary election in Du Page County. Following that primary, the Democratic Party, who had no candidate for State Senator of the 23rd Legislative District, nominated Cullerton as its candidate for the November 2008 general election. The Du Page County Electoral Board sustained an objection to Cullerton's candidacy, which the circuit court reversed. On appeal, the appellate court held that Cullerton was ineligible to run as a Democratic candidate in the general primary election. *Cullerton*, 384 Ill. App. 3d at 990. After reviewing the history of the party-switching provisions in the Election Code, the appellate court concluded: "The plain and ordinary meaning of the requirement that a candidate be a qualified primary voter of the party for which he seeks a nomination mandates, if nothing else, that the candidate have been eligible to vote in the primary for that party in the most recent primary election preceding the candidates' filing the statement of candidacy." *Cullerton*, 384 Ill. App. 3d at 996.

The appellate court explained that when Cullerton chose to vote in the Republican and not the Democratic primary in 2008, he was "locked" as a Republican primary voter until the next primary, then scheduled for 2010. Thus, at the time Cullerton submitted his statement of candidacy, he was not a qualified primary voter of the Democratic Party. *Cullerton*,384 Ill. App. 3d at 996.

Though Hossfeld argues that the same result should obtain here, the situation addressed in *Cullerton* is not the situation we address here. In *Cullerton*, the candidate attempted to switch parties within one election cycle or season, i.e., Cullerton voted a Republican ballot at the primary, but then sought to run as a Democratic candidate at the general election for which that primary was held. In contrast, the election cycle or season during which Rauschenberger voted a Democratic ballot—the 2009 consolidated election in Elgin Township—was completed with the general township election in April 2009, prior to Rauschenberger aligning himself with the Republican Party in his October 2009 nomination papers for purposes of the 2010 general primary. Rauschenberger has not attempted to switch parties during this new election cycle which will be completed with the November 2010 general election. Thus, Hossfeld's reliance on *Cullerton* is misplaced.

Moreover, we find nothing in the language of section 7-10 or 8-8 of the Election Code to support Hossfeld's argument that Rauschenberger's nomination papers falsely state that he is a "qualified primary voter of the Republic Party." As the appellate court here correctly observed, the Election Code no longer contains express time limitations on party-switching, and Rauschenberger did not run afoul of the only remaining restriction, set forth in both sections 7-10 and 8-8, that a "'qualified primary elector' of a party may not sign petitions for or be a candidate in the primary of more than one party" See398 III. App. 3d at 744.

Accordingly, based upon *Hossfeld*, it would appear that, while an individual would be prohibited from running as a Democratic Candidate in the same primary cycle in which he took a Republican primary ballot, there is no statutory restriction preventing a voter from signing the nomination petition of a Candidate being placed in nomination by the Democratic Party for the general election, even if the signer of the petition had chosen a Republican ballot in the primary election.

This conclusion seems to be supported by tracking the legislative history of 10 ILCS 5/7-

43. Prior to November 9, 2007, § Ch. 46, par 7-43, included paragraph (b) which provided:

Sec. 7-43. Every person having resided in this State 6 months and in the precinct 30 days next preceding any primary therein who shall be a citizen of the United States of the age of 18 or more years, shall be entitled to vote at such primary.

The following regulations shall be applieable to primaries:

No person shall be entitled to vote at a primary:

- (a) Unless he declares his party affiliations as required by this Article.
- (b) Who shall have signed the petition for nomination of a candidate of any party with which he does not affiliate, when such candidate is to be voted for at the primary. (emphasis added)

The statue was amended on November 9, 2007 and the aforementioned section was stricken. Additionally, on March 30, 2012, the following paragraph added to the statute:

A person (i) who filed a statement of candidacy for a partisan office as a qualified primary voter of an established political party or (ii) who voted the ballot of an established political party at a general primary election may not file a statement of

candidacy as a candidate of a different established political party or as an independent candidate for a partisan office to be filled at the general election immediately following the general primary for which the person filed the statement or voted the ballot. A person may file a statement of candidacy for a partisan office as a qualified primary voter of an established political party regardless of any prior filing of candidacy for a partisan office or voting the ballot of an established political party at any prior election.

The exclusion of one provision and the enactment of another provide in the same statute, provide clear indications of what issues the legislature intended to address.

Further, while the need to prevent a voter affiliated with one party from signing the nominating petition for a Candidate of another party in a primary election is a practical way of preventing a political party from selecting a candidate of an opposing party it considers vulnerable, the need to protect a political party from allowing an opposing political party to choose a candidate it views as vulnerable in the general election is inapplicable in this case, since the candidate nominated to fill the vacancy is chosen by the party.

Finally, much of the confusion as to whether to allow a person, who has voted for an established party in a primary election, to sign the nominating petition of a candidate of an opposing party after the primary is concluded, stems from the term "qualified primary elector"

An examination of § 10 ILCS 5/3-1.2, entitled "Eligibility to sign petition", seems to clarify the meaning that should be attached to the phrase.

Sec. 3-1.2. provides, in pertinent part, as follows:

<sup>&</sup>lt;sup>1</sup> See Citizens for John W Moore Party v, Board of Election Commissioners, 794 F.2d. 1254, 1261 (7th Cir. 1986), wherein the Seventh Circuit explained that such restrictions prevent political maneuvers that could affect the quality of the candidates who will be on the ballot. For example, if one party determines that a certain opponent will be a weaker candidate in the general election, that party could circulate petitions on behalf of the weaker candidate for the primary election in the hope that votes will be drawn away from an opposition candidate the party deems to propose a greater threat to its chances of prevailing in the general election

For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the terms "voter", "registered voter", "qualified voter", "legal voter", "elector", "qualified elector", "primary elector" and "qualified primary elector" as used in this Code or in another Statute shall mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition.

Thus, as long as the voter signing the nominating petition is "registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition", the additional language of "qualified primary elector" does not prevent a voter from signing the nominating petition of a Candidate running to fill a vacancy of one party, even though the same voter chose the ballot of the opposing party in the primary election.

#### HEARING

At the hearing, the parties acknowledged that of the 663 signatures contained in the Candidate's nominating petitions, the record examination found 52 signatures invalid. The parties stipulated that the Objector presented Rule 9 documentation establishing that, in addition to the 52 signatures found to be invalid, 109 persons signing the Candidate's nominating petition had selected a Republican primary ballot on March 15, 2016.

The parties could not agree on whether 9 additional persons signing the Candidate's nominating petition had selected a Republican primary ballot on March 15, 2016. Accordingly, your hearing Examiner reviewed the documentation and sustained 4 of the objections and overruled 5 objections.

Accordingly, if the Electoral Board follows the Hearing Examiner's recommendation and grants the Candidate's Motion to Dismiss, then the Candidate has in excess of 500 valid signatures and should appear on the ballot for the general election.

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On the other hand, should the Electoral Board reject the recommendation, and then the Candidate has 498 valid signatures and should not appear on the ballot for the general election

Respectfully Submitted

Print Krasny Hearing Examiner

6/27/16

#### Walker v McGraw Jr. 16 SOEB GE 500

Candidate: Ken L. McGraw Jr.

Office: 3<sup>rd</sup> Congress

Party: Republican

**Objector:** John Walker

Attorney For Objector: Michael Kasper

Attorney For Candidate: No appearance

Number of Signatures Required: 548

Number of Signatures Submitted: 630

Number of Signatures Objected to: 155

Basis of Objection: 1. The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," "Signer Signed Petition More than Once" and "Signer Signed Democratic Petition."

Dispositive Motions: None

Binder Check Necessary: Yes

**Hearing Officer:** Phil Krasny

Hearing Officer Findings and Recommendations: A records examination commenced and was completed on June 16, 2016. The examiners ruled on objections to 155 signatures. 102 objections were sustained, leaving 528 valid signatures, which is 20 signatures less than the required minimum number of 548 signatures.

No Rule 9 materials were filed. A hearing was held on June 27, 2016. The Objector was present by counsel and the Candidate did not appear, although served with proper notice.

The Hearing Officer recommends that the Candidate's name not appear on the ballot in the 2016 general election for the Office of Representative in Congress for the Illinois 3<sup>rd</sup> Congressional District.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

# BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 3rd CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

John Walker,	)	
Petitioner-Objector,	)	· · · · · · · · · · · · · · · · · · ·
v.	)	
Ken L. McGraw Jr.,	) )	
Respondent-Candidate.	ý	3.03 3.03 3.03 3.03 3.03 3.03 3.03 3.03
	OBJECTOR'S PETITION	ē i

INTRODUCTION

John Walker, hereinafter sometimes referred to as the Objector, states as follows:

- 1. The Objector resides at 9420 S. Sayre, Oak Lawn, Illinois, Zip Code 60453, in the 3rd Congressional District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
- 2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in Congress for the 3rd Congressional District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

#### **OBJECTIONS**

- 3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Ken L. McGraw Jr. as a candidate for the office of Representative in Congress for the 3rd Congressional District of the State of Illinois ("Office") to be voted for at the General Election on November 8, 2016 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
- 4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to Section 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Congressional District equal to the number required for a candidate to qualify for the ballot in the Primary Election.

- Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 548 duly qualified, registered and legal voters of the 3rd Congressional District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 548 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
- 6. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column a., "Signature Not Genuine signature of purported voter," in violation of the Illinois Election Code.
- 7. The Nomination Papers contain petition sheets while the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix Recapitulation attached hereto and incorporated herein, under the heading Column b., "Signer Not Registered at Address Shown within political district," in violation of the Illinois Election Code.
- 8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 3rd Congressional District of the State of Illinois, and such persons are not registered voters in the 3rd Congressional District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.
- 9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incompled as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated by the under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Ulhois Election Code.
- 10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet/Line Indicated," in violation of the Illinois Election Code.
- 11. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers whose signatures are invalid because they signed a nominating petition for another political party for the March 15, 2016 primary election. As a result, their signatures on the Candidate's Nomination Papers are invalid as being in violation of the Illinois Election Code. Such signers are referenced by sheet and line in the left hand columns, with corresponding reference in the three remaining columns to the last name of the candidate whose

Democratic Party primary petition he or she signed, as well as reference to the sheet and line on that candidate's primary petition are:

- 12. The Nomination Papers contain less than 548 validly collected signatures of qualified and duly registered legal voters of the 3rd Congressional District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.
- 14. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 3rd Congressional District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Ken L. McGraw Jr. shall not appear and not be printed on the ballot for election to the office of Representative in Congress for the 3rd Congressional District of the State of Illinois, to be voted for at the Election to be held November 8, 2016.

**ÓBJECTOR** 

Address: John Walker 9420 S. Sayre Oak Lawn, IL 60453

tolen Walter

**VERIFICATION** 

STATE OF ILLINOIS	)	
- ·	)	SS.
COUNTY OF Cook	)	

I, John Walker, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

John Walker

Subscribed and sworn to before me

by John Walker

this 6 day of June, 2016.

Notary Public

OFFICIAL SEAL SHAW J DECREMER NOTARY PUBLIC - STATE OF ILLINGIS MY COMMISSION EXPIRES: 10/84/17

#### BEFORE THE DULY CONSTITUTED STATE OFFICERS FLECTORAL BOARD

JOHN WALKER	)	
Pctitioner/Objector,	)	
Vs.	)	
KEN MCGRAW JR.	)	
Respondent/Candidate.	) )	No. 2016-S0EB 500
	)	

#### FINDINGS AND RECOMMENDATIONS

#### PROCEDURAL HISTORY

Following the March 15, 2016 primary election, there was no Republican Party Candidate nominated to run in the 2016 general election for the Office of Representative in Congress for the Illinois 3<sup>rd</sup> Congressional District. To fill the vacancy the Respondent/Candidate name was placed in nomination. (See 10 ILCS 5/7-60 et. seq.). However, to be placed on the ballot, the Candidate needed to submit nominating partitions containing 500 "qualified primary electors residing in the political division for which the nomination is sought" (10 ILCS 5/7-10).

The Candidate thereafter filed petitions containing 630 signatures.

The Petitioner/Objector filed an objection to the nominating petitions alleging legal and factual deficiencies in the submitted nominating petitions.

On June 13, 2016, the Electoral Board appointed Philip Krasny as the Henring Examiner to conduct a hearing on the objections to the nominating petitions and present recommendations to the Electoral Board.

An initial case management conference was held on June 13, 2016, which was attended by Michael Kasper, attorney for the Objector. The Candidate did not appear.

At the case management conference an order was entered which, inter alia, provided

that a record examination was to be conducted on June 16, 2016 and continued the matter to

June 27, 2016 at 10:30 a.m. for a hearing at the offices of the SBOE. The order also provided

that the timeline set forth in the order was subject to proof that the Candidete had been

served.

No Motions were filed.

A record examination was completed on June 16, 2016, at which time it was found

that, out of 155 objections, the Candidate had 53 valid signatures and 102 invalid signatures:

thereby resulting in 480 valid signatures, 20 less than required by statute.

Following the records exam, no Rule 9 material was filed.

A hearing was held on June 27, 2016 at the offices of the SBOE in Chicago. The

Objector was represented by Michael Kasper. The Candidate did not appear.

HEARING

At the outset of the hearing, your Hearing Examiner stated that he spoke with Bernadette

Harrington, a representative from the SBOE, who indicated that the Candidate had been sorred

and that there had been no contact between the Candidate and the SBE or Electoral Board.

RECOMENDATION

Accordingly, based upon the result of the record examination, it is recommended that the

Candidate's name not appear on the ballot in the 2016 general election for the Office of

Representative in Congress for the Illinois 3<sup>rd</sup> Congressional District.

Respectfully Submitted

Philip Krásny

6/28/16

Hearing Officer

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#### Imhoff v Evans 16 SOEB GE 501

Candidate: Richard Evans

Office: 43rd State Representative

Party: Republican

Objector: Frank F. Imhoff

Attorney For Objector: Michael Kasper

Attorney For Candidate: Pro se

Number of Signatures Required: 500

Number of Signatures Submitted: 766

Number of Signatures Objected to: 441

**Basis of Objection:** 1. The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," "Signer Signed Petition More than Once" and "Signer Signed Democratic Petition." 2. Objector alleges that one petition sheet, page 87, is not notarized and therefore all signatures on that sheet must be stricken. 3. Objector alleges that the nomination papers are invalid in their entirety because the purported Representative District Committee of the Republican Party for the 43<sup>rd</sup> Representative District did not meet and organize within the 43<sup>rd</sup> Representative District as required by the Illinois Election Code.

**Dispositive Motions:** Candidate's Rule 9 Motion

Binder Check Necessary: Yes

**Hearing Officer:** Phil Krasny

**Hearing Officer Findings and Recommendations**: A records examination commenced and was completed on June 20, 2016. The examiners ruled on objections to 441 signatures. 352 objections were sustained, leaving 414 valid signatures, which is 86 signatures less than the required minimum number of 500 signatures.

A hearing was held on June 27, 2016. The Objector was represented by counsel, and the Candidate appeared personally, representing himself. The Candidate orally moved to continue the ease in order to submit voter registration and affidavits which he claimed were needed to rehabilitate signatures found invalid by record examiners. The Objector objected to the request. The Hearing

Examiner recommends that the motion to extend time be denied. The Rules of Procedure require Rule 9 material to be presented by 5:00 p.m. on the third day following the transmittal of the results of the record examination. Furthermore, an inspection of the Rule 9 documents timely filed by the Candidate includes a summary of signatures the Candidate believes were wrongly stricken: the summary listed only 35 signatures argued to be legitimate. Accordingly, even if all 35 signatures found to be invalid were rehabilitated, the Candidate would only have 449 signatures, 51 less than the 500 required by statute.

The Hearing Examiner recommends that the oral Motion to Continue be denied and the Candidate's name not appear on the ballot for the 2016 general election for the office of State Representative for the 43<sup>rd</sup> Representative District.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 43rd REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Frank F. Imhoff,	)	16
Petitioner-Objector,	)	0 € 10 E E E E E E E E E E E E E E E E E E
v.	)	73
Richard Evans,	)	୍ର ପ୍ରକ୍ର ପ୍ରକ୍ରେ
Respondent-Candidate.	)	•

#### **OBJECTOR'S PETITION**

#### INTRODUCTION

Frank F. Imhoff, hereinafter sometimes referred to as the Objector, states as follows:

- 1. The Objector resides at 739 Prospect Blvd., Elgin, Illinois, Zip Code 60120, in the 43rd Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
- 2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 43rd Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

#### **OBJECTIONS**

- 3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Richard Evans as a candidate for the office of Representative in the General Assembly for the 43rd Representative District of the State of Illinois ("Office") to be voted for at the General Election on November 8, 2016 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
- 4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to Sections 8-17 and 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Republican Party appeared on the ballot for nomination to the leading to the leadi

number required for a candidate to qualify for the ballot in the Primary Election.

- 5. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 500 duly qualified, registered and legal voters of the 43rd Representative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 500 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
- 6. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.
- 7. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.
- 8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 43rd Representative District of the State of Illinois, and such persons are not registered voters in the 43rd Representative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.
- 9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.
- 10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet/Line Indicated," in violation of the Illinois Election Code.
- 11. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers whose signatures are invalid because they signed a nominating petition for another political party for the March 15, 2016 primary election as is set forth

specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column f., "Signer Signed Democratic Petition," in violation of the Illinois Election Code.

- 12. The Nomination Papers contain one petition sheet, Sheet Number 87, that is not notarized in violation of the Illinois Election Code. As a result, every signature on such sheet is invalid in its entirety.
- 13. The Nomination Papers are invalid in their entirety because the purported Representative District Committee of the Republican Party for the 43rd Representative District did not meet and organize within the 43<sup>rd</sup> Representative District, as required by the Illinois Election Code. Because the Representative Committee did not meet and organize within the 43<sup>rd</sup> Representative District it lacked legal authority to fill the vacancy in nomination, and the purported nomination, designation and appointment is invalid.
- 14. The Nomination Papers contain less than 500 validly collected signatures of qualified and duly registered legal voters of the 43rd Representative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.
- 15. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 43rd Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Richard Evans shall not appear and not be printed on the ballot for election to the office of Representative in the General Assembly of the 43rd Representative District of the State of Illinois, to be voted for at the Election to be held November 8, 2016.

**OBJECTOR** 

Address:

Frank F. Imhoff 739 Prospect Blvd., Elgin, Illinois, 60120

Frant F. Selfe

#### **VERIFICATION**

STATE OF ILLINOIS	)
	) SS.
COUNTY OF Cook	)

I, Frank F. Imhoff, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

From F. Jull

Subscribed and sworn to before me

by Frank F. Imhoff

this 6 day of June, 2016.

Notary Public

OFFICIAL SEAL SHAW J DECREMER NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:10/24/17

#### BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

FRANK IMHOFF	)	
	)	
Petitioner/Objector,	)	
	)	
Vs.	)	
	)	
RICHARD EVANS	)	
	)	No. 2016-S0EB 50
Respondent/Candidate.	)	
	)	

#### FINDINGS AND RECOMMENDATIONS

#### PROCEDURAL HISTORY

Following the March 15, 2016 primary election, there was no Republican Party Candidate nominated to run in the 2016 general election for the State Office of Representative for the 43<sup>nd</sup> Legislative Representative District. To fill the vacancy, the Respondent/Candidate's name was placed in nomination. (See 10 ILCS 5/7-60 et. seq.). However, to be placed on the ballot, the Candidate needed to submit nominating petitions containing 500 "qualified primary electors residing in the political division for which the nomination is sought" (10 ILCS 5/7-10).

The Candidate thereafter filed petitions containing 766 signatures.

The Petitioner/Objector filed an objection to the nominating petitions alleging legal and factual deficiencies in the submitted nominating petitions.

On June 13, 2016, the Electoral Board appointed Philip Krasny as the Hearing Examiner to conduct a hearing on the objections to the nominating petitions and present recommendations to the Electoral Board

An initial case management conference was held on June 13, 2016, which was attended by Michael Kasper, attorney for the Objector. The Candidate represented himself.

At the case management conference an order was entered which, inter alla, gave the narries specified times to file motions and requests for issuance of subnorms.

No Motions were filed.

A record examination was completed on June 20, 2016, at which time it was found that, out of 441 objections, the Candidate had 89 valid signatures and 352 invalid signatures; thereby resulting in 414 valid signatures, 86 less than required by statute.

Following the records exam, the Candidate timely filed Rule 9 documents with the Electoral Board, with copies provided to the Objector and Hearing Examiner.

A hearing was held on June 27, 2016 at the offices of the SBOE in Chicago. The Objector was represented by Michael Kasper. The Candidate represented himself.

#### HEARING

At the outset of the hearing, the Candidate orally moved to continue the case so that the could submit voter registration and affidavits which he claimed were needed to rehabilitate signatures that were found to be invalid by the record examiners. The Candidate argued, inter-alia, that he had made a good faith effort to comply with the filling of documents under Rule 9, but because of the lack of manpower, he was unable to secure all necessary documents. He posited that, based upon his review of the documents he intended to introduce, he had in excess of 500 valid signatures and that, in the interest of substantial justice, he be allowed additional time to secure the requisite documents.

The Objector objected to the oral request for a continuance.

Based upon the Rules of Procedure promulgated by the Electoral Board, which required that Rule 9 material be presented by 5:00 p.m. on the third day fellowing the transmitted of the results of the record examination, it is your Hearing Examiner's recommendation that the oral

motion to extend time be denied.

An inspection of the Rule 9 documents timely filed by the Candidate includes a summary of signatures the Candidate believed were wrongly stricken. Although the summary indicates

that, "each of the pages have flaws in the initial objector's remarks", the summary only listed 35

signatures which were "legitimate", i.e.; the signatures should not have been found to be invalid.

since they were of voters who lived in the district and their signatures matched the signature on

the voter rolls.

RECOMENDATION

Accordingly, even if all the 35 signatures found to be invalid were rehabilitated, the

Candidate would only have 449 signatures, 51 signatures less than the 500 required by statute.

Thus, it is recommended that the Candidate's name not appear on the ballot for the 2016 general

election for the State Office of Representative for the 43<sup>nd</sup> Legislative Representative District

Respectfully Submitted

Hearing Officer

6/28/16

#### Danforth v Mazeski 16 SOEB GE 502

Candidate: Kelly Mazeski

Office: 26<sup>th</sup> Senate

Party: Democratic

**Objector:** Michael Danforth

Attorney For Objector: Burton S. Odelson

Attorney For Candidate: Ross D. Secler

Number of Signatures Required: 1000

Number of Signatures Submitted: not disputed

Number of Signatures Objected to: not applicable

**Basis of Objection:** The inappropriate committee (the "26<sup>th</sup> State Senate Central Committee" or the "26<sup>th</sup> District State Central Committee") made an inappropriate appointment, because it was the "Legislative Committee" which was to have made the appointment; the date of any vote on the purported appointment was necessary and not made clear; and, further, the meeting of this inappropriate committee was held outside of the 26<sup>th</sup> Legislative District.

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss Objector's Petition, or in the alternative, Motion for Summary Judgment; Objector's Reply to Candidate's Motion to Strike and Dismiss; Response and Motion to Strike Affidavit of Michael Bissett

Binder Check Necessary: No

Hearing Officer: Jim Tenuto

**Hearing Officer Findings and Recommendation:** The Candidate argues primarily that any objection to the "Resolution to Fill Vacancy in Nomination" must fail because Paragraph 9 of Section 5/7-61 controls, and does not require filing of a Resolution when no Democratic candidate was nominated the General Primary. The Candidate also argues that the Objector is precluded from objecting to the form of the "notice of appointment" because the issue was not raised in the Objection, and, alternatively, that the appropriate legislative committee met and adequately satisfied the "notice of appointment" requirement. Finally, Candidate challenges the Objector's assertion that the meeting was held outside the limits of the 26<sup>th</sup> Legislative District.

In his Response to the Motion to Strike and Dismiss, the Objector agrees with Candidate that Paragraph 9 of Section 5/7-61 is controlling, but argues that an inappropriate committee attempted

to make the appointment, because it was the "Legislative Committee" which was to have made the appointment, the date of any vote on the appointment was not made clear, and, further, that the meeting of this inappropriate committee was improperly held outside of the 26<sup>th</sup> Legislative District.

The Hearing Examiner recommends that the Candidate's Motion to Strike and Dismiss. or in the Alternative, Motion for Summary Judgment, be granted. The appropriate committee to fill a vacancy in nomination when no candidate has been nominated for State Senator at the General Primary Election is the "Legislative Committee" per Section 5/8-5. Rather than "Legislative Committee," the instant "Resolution" states "26<sup>th</sup> State Central Committee" and "26<sup>th</sup> District State Central Committee." Nonetheless, appropriate persons (Chairs of the Lake County and McHenry County Democratic Party) signed the Resolution, and the Hearing Examiner recommends that failure to insert "Legislative Committee" not invalidate the nomination where there has been substantial compliance.

The Resolution states the "date of meeting" to be April 29, 2016. The Hearing Examiner finds that it is a logical conclusion and reasonable inference that the date of the meeting is also the date upon which the nomination occurred; while it would have been preferable to state the same expressly. an Affidavit from meeting Chair Bissett swears that it was the nominating meeting which took place on the date in question, adding strength to this reasonable inference.

The Hearing Examiner sought clarification from the Candidate as to the precise location of the meeting. An affidavit was provided by meeting Chair Michael Bissett, which, *inter alia*, provided an address for the meeting in question in its Paragraph 12. The Objector filed a Motion to Strike the affidavit on the basis that only Paragraph 12 addresses the Hearing Examiner's inquiry. The Hearing Examiner recommends that all paragraphs other than Paragraph 12 be stricken, as irrelevant to the specific issue of inquiry. Notwithstanding, the Hearing Examiner finds that the address stated in Paragraph 12 is within the 26<sup>th</sup> Legislative District, and while the "Certificate of Legislative or Representative Committee Organization" incorrectly noted the meeting to have taken place in Palatine (parts of which are outside the 26<sup>th</sup> Legislative District), the Hearing Examiner suggests that such error should not be fatal.

The Hearing Examiner accordingly recommends that the Candidate's Motion to Strike and Dismiss, or in the Alternative, Motion for Summary Judgment, be granted, and Candidate's name be certified for the ballot as the Democratic Candidate for the office of State Senator for the 26<sup>th</sup> Legislative District.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

PASSING UPON OF OBJECTIONS TO THE PETITIONS FOR ELECTION FOR THE OFFICE OF STATE SENATOR, 26th LEGISLATIVE DISTRICT, STATE OF ILLINO!S TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION

MICHAEL DANFORTH,

Petitioner-Objector

Same of the same of the same of the same

v.

KELLY MAZESKI,

ORIGINAL ON FILE OF STATE BD OF ELECTIONS ORIGINAL TIME STAN AT 6 7 16 316 pm.

Respondent-Candidate

#### **OBJECTOR'S PETITION**

The Objector, Michael Danforth, states that he resides at 1107 Victoria Drive, Fox River Grove, Illinois, 60021, and that he is a duly qualified and registered legal voter of the 26<sup>th</sup> Legislative District, State of Illinois, the Legislative District from which the candidate seeks election. Objector states that his interest in filing the following objections is that of a citizen desirous of seeing that the election laws governing the filing of nomination papers, petitions for election, and other required documents, for the office of State Senator, 26<sup>th</sup> Legislative District, State of Illinois, are properly complied with, and that only qualified candidates appear on the ballot for said office as candidates at the November 8, 2016 General Election ("Election").

Therefore, the Objector makes the following objections to the Petitions and Nomination Papers of Kelly Mazeski as a candidate for State Senator, 26<sup>th</sup> Legislative District, State of Illinois, to be voted upon at the November 8, 2016 Election.

- 1. Pursuant to state law, nomination papers for the nomination and election to the office specified above, must contain the signatures of not fewer than 1,000 duly qualified, registered and legal primary Democratic voters of said District collected in the manner prescribed by law. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain signatures in excess of such voters and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
- 2. The Petitions must also contain the proper Resolution to Fill the Vacancy in nomination of the Democratic Party for State Senator in the 26<sup>th</sup> Legislative District as provided in the Election Code, as well as the proper nominating committee making the nomination in the proper timeframe, and under the mandatory requirements specified in Articles 7 and 8

of the Election Code.

- 3. The Legislative Committee of the appropriate Legislative District must be properly organized prior to the Committee making a valid appointment to fill a vacancy in nomination.
- 4. The Certificate of Legislative Committee Organization filed May 24, 2016 with the State Board of Elections (Ex. A) is <u>certified</u> by Michael Bissett, Chairman, and Terry Link, Secretary, of the <u>26<sup>th</sup></u> Legislative District of the Democratic Party on April 29, 2016. The Certificate clearly specifies that the Legislative Committee of the Democratic Party of the <u>26<sup>th</sup></u> Legislative District met on April 29, 2016, in the City of Palatine, County of Lake, and organized by electing the following officers...
- 5. That the Resolution to Fill a Vacancy in Nomination was filed with the Petitions on May 31, 2016 purporting to nominate Kelly Mazeski as the candidate of the Democratic Party for State Senator for the 26th Legislative District. (Ex. B)
- 6. The Democratic Party of the 26<sup>th</sup> Legislative District (Ex. A) cannot legally nominate a State Senator candidate to fill a vacancy in the 26<sup>th</sup> Legislative District. The Resolution to Fill a Vacancy in Nomination is false and not in compliance with the applicable provisions of Article 7 and Article 8 of the Election Code since the 26<sup>th</sup> State Senate Central Committee or the 26<sup>th</sup> District State Senate Democratic Central Committee are not the proper committees of the Democratic Party to nominate a candidate in the 26<sup>th</sup> Legislative District. Further, the appropriate committee was not legally organized prior to the purported Resolution to Fill a Vacancy in Nomination that was purportedly signed on April 29, 2016.
- 7. Section 5/7-61 and 5/8-5 set forth the mandatory requirements necessary to fill a vacancy in nomination.
- 8. The "appropriate" committee to fill a vacancy in the Democratic nomination in the 26<sup>th</sup> Legislative District for the office of State Senator, is the 26<sup>th</sup> Legislative District Committee of the Democratic Party not the 26<sup>th</sup> State Senate Central Committee or the 26<sup>th</sup> District State Senate Democratic Central Committee as represented in the Resolution to Fill a Vacancy ("Resolution"). In fact, it is the Chairman of the County Central Committees of the Counties in the 26<sup>th</sup> Legislative District that make up the 26<sup>th</sup> Legislative District Committee. (5/8-5)
- 9. The "Resolution" does not designate or state on what date the appropriate committee voted to nominate Kelly Mazeski. Thus, no date as to when the petition process may begin is ascertainable from the Resolution, or the petitions with signatures filed with the State Board of Elections. All petition sheets are not in compliance with Article 8 of the Election Code since the first date to circulate cannot be ascertained by the Resolution.

- 10. The Certificate of Legislative Committee Organization clearly specifies that the meeting was held on April 29, 2016 in Palatine in Lake County, which is <u>not</u> within the 26<sup>th</sup> Legislative District, but is within the 27<sup>th</sup> Legislative District.
- 11. That 5/8-5 requires the meeting of the appropriate legislative committee to be held, "...in the limits of such district."
- 12. Since the meeting was clearly held "outside the limits" of the 26<sup>th</sup> Legislative District, it was not a legal meeting, and all acts purportedly conducted at the meeting are void, illegal, and not in conformity with the requirements of the Election Code.
- 13. Since the 26<sup>th</sup> Legislative Committee was not properly organized, it does not exist and cannot nominate a candidate to fill a vacancy in nomination in the 26<sup>th</sup> Legislative District.
- 14. The Certificate of Legislative Committee Organization, the Resolution to Fill a Vacancy in Nomination, and each and every petition sheet are not in compliance with the mandatory requirements of the Election Code as set forth above. Any of the above specified defects invalidates the Petitions and is grounds to invalidate and hold for naught, the candidacy of Kelly Mazeski.

WHEREFORE, Objector prays that the nomination papers of Kelly Mazeski as a candidate for State Senator, 26<sup>th</sup> Legislative District, State of Illinois, to be voted upon at the November 8, 2016 Election be declared to be insufficient and not in compliance with the laws of the State of Illinois, and that her name be stricken, and that this Board enter its decision declaring that the name of Kelly Mazeski as a candidate for State Senator, 26<sup>th</sup> Legislative District, State of Illinois, not be printed upon the official ballot for the Election to be conducted November 8, 2016.

Objector

Burton S. Odelson ODELSON & STERK, LTD. 3318 W. 95<sup>th</sup> Street Evergreen Park, IL 60805 (708) 424-5678 (708) 424-5755 – fax attyburt@aol.com

#### **VERIFICATION**

State of Illinois )
County of Cook ) ss.
The undersigned, being first duly sworn, deposes and states that he is the Objector in the above Verified Objector's Petition, that he has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.
Mul A CALLA OBJECTOR
Michael A. Sanforki
Subscribed and sworn to before me, a Notary Public, by 5/11/2 of Illinois Au
on June 7, 2016.
Sandes L'Utille of
NOTARY PUBLIC
NOTARY PUBLIC SAUDRA L WHOCH
OFFICIAL SEAL SANDRAL VITTICH NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIREZIONIZIS

CERTIFICATE OF LEGIS	LATIVE OR REPRESENTATIVE	COMMITTEE ORGANIZATION

26-H1  LEGISLATIVE DISTRICT )  OR ) fill in only ONE blank  REPRESENTATIVE DISTRICT )
STATE OF ILLINOIS  COUNTY OF
This is to certify that, in accordance with 10 ILCS 5/8-5, the Legislative or Representative
Committee (circle one) of the Democratic Party of the 26th Legislative or
Representative District (circle one) met on $40ril 29, 2016$ , in the City of
Palatine County of Lake and organized by electing
the following officers in conformity with the Election Laws of this State.
Michael Bissett PRINT CHAIRMAN'S NAME
971 Brittany Bend, Lake in the Hills 12 6015
PRINT SECRETARY'S NAME
1280 Streamwood Lid, Veriood Hills Goods COMPLETE MAILING ADDRESS
SIGNED: CHAIRMAN
ATTEST: A TOTAL

EXHIBIT A

Suggested Revised April, 2012 SBE No. P-3A

## RESOLUTION TO FILL A VACANCY IN NOMINATION (Failure to nominate candidate at primary election)

WHEREAS, a vacancy in the nomination of	the Democratic	Party for the O	ffice of State Se	nator	
in and for the 26th					
for the Office of State Senator	in and for the	26th	triot (if applicable) o	f Illinois at the	
for the Office of State Senator  orimary election conducted on March 1	5, 2016 (date of elect	tion);	uict (ii applicable) o	i initiois at the	
26th State Senate Ce 26th District (if applicable) of Illinois sald vacancy as required by 10 ILCS 5/7-61	has voted to nominate a ca	Democrate of the	ic Party in Democratic	and for the	
BE IT RESOLVED, that the 26th District S 26th District (if applicable) of Illino				y in and for the	
Kelly Mazeski				1	
(Name of C	Candidate)	·			
If required pursuant to 10 ILCS 5/7-10.	2 or 8-8.1, complete the follow	wing (this informat	ion will appear on the	ballot)	
formerly known as (List all names du	ring tast 3 years)	changed on	(List date of each name	ne change)	
254 W. County Line Road (Address)	Barrington	, iii	nois 60010 fo	r the office of	
	(City, Village in and for the				
ne General or Consolidated Election to be i				voied ape.rat	
MASSE (CHAIRMAN)	_	Lux	(SERETARY)	16 HAY (	7
6th District State Senete Democratic Central	<del>.</del>	26th District State	e Senate Democratic Centre	Committee	,
f the 26th District (if applicable)		of the 26th	District (if app	_ =	100000000000000000000000000000000000000
ate of meeting: April 29, 2016				<b>hal</b>	6
(insert month, day, year)	11001 01000	7			
gned and sworn to (or affirmed) by Tel	HAEL BISSE RAY LINK ame of Chairman & Secreta	before	me, on April 29, (Insert month		
CFFICIAL STAL LEEN BENCH SCHADT RYPUSUC STATE OF ALINOIS		fathlen (Note	Beyon bu	unude	_

### BEFORE THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED ELECTORAL BOARD

MICHAEL DANFORTH	)	
Petitioner-Objector,	)	
v.	)	No. 2016-SOEB-GE-502
KELLY MAZESKI,	)	
Respondent-Candidate.	)	
	)	

## CANDIATE'S MOTION TO STRIKE & DISMISS OBJECTOR'S PETITION OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

NOW COMES, Respondent-Candidate, KELLY MAZESKI, (the "Candidate") by and through her attorney, ROSS D. SECLER, and hereby moves for the entry of an order striking and dismissing the Objector's Petition, filed by Petitioner-Objector, MICHAEL DANFORTH (the "Objector"). In support thereof, Candidate states as follows:

#### INTRODUCTION & PROCEDURAL BACKGROUND

- 1. No candidate's name appeared for the Democratic Party for the office of State Senator in the 26th Legislative District, State of Illinois at the General Primary Election hold March 15, 2016, nor was a candidate nominated for said office by virtue of running as a write-in candidate, which left a vacancy in nomination. The Legislative Committee of the Democratic Party for the 26th Legislative District, in accordance with the provisions of the Election Code of Illinois (10 ILCS 5/1-1, et seq.), appointed Candidate to be the candidate of the Democratic Party for the office of State Senator in the 26th Legislative District in the State of Illinois, to be voted upon at the General Election to be held on November 8, 2016.
- 2. On May 31, 2016 Candidate filed her petitions and nomination papers in order to appear as a candidate for the Democratic Party for the affice of State Senator in the 26th Legislative District, State of Illinois at the General Election to be held on November 8, 2016.

- 3. Objector filed his "Objector's Petition" on June 7, 2016 in which he challenges Candidate's appointment. Objector raises three "grounds" that allegedly disqualify Candidate and deny her right to access the ballot. Those "grounds" are:
  - a. That the "Resolution to Fill a Vacancy in Nomination" does not represent that the correct, appropriate legislative committee to fill the vacancy in nomination;
  - b. That the "Resolution" does not state the date on which the appropriate legislative committee met and voted to nominate Candidate; and
  - c. That the appropriate committee "was not legally organized" prior to Candidate's appointment.

See generally Objector's Petition, ¶¶6, 9.

- 4. Objector's allegations reflect a fundamental misunderstanding or misreading of the Election Code and controlling case law and each of Objector's allegations will be discussed in turn.
- 5. Ultimately, Objector has failed to even state a valid, applicable objection and Objector's Petition should be stricken in its entirety. Alternatively, based on the objections contained in the Objector's Petition, there is no genuine issue of material fact that would entitle Objector to the relief he seeks and thus the objections should be overruled as a matter of law.

#### ARGUMENT

- 6. Objector has failed to meet the minimum pleading requirements governing objections to nominating petitions and thus cannot be granted the relief he seeks.
- 7. Section 10-8 of the Illinois Election Code (10 ILCS 5/10-8) sets for the standard for legal sufficiency of an objection to nominating petitions and requires that, "[the objector's petition . . . shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question . . . " 10 ILCS 5/10-8; See also 10 ILCS 5/7-61, 10 ILCS 5/8-17 (directing electoral boards having jurisdiction under Section 10-9 to hear and

pass upon objections to nominating petitions also shall hear and pass upon chieffions to nomination petitions filed by candidates in cases like the case at bar).

- 8. Fulfillment of each of the requirements in §10-8 is mandatory. See Pochie v. Cook County Officers Electoral Bd., 289 Ill. App. 3d 585 (1st Dist. 1997). Objector's failure to state a valid objection upon which relief can be granted by this honorable electoral board warrants dismissal of the Objector's Petition outright.
- 9. Electoral boards have stated that, in order to fully state the nature of an objection, at least some credible evidence is required, sufficient to custain a minimal burden of proof. See In re Objection of Smith, p. 2 (Sangamon Cty. Electoral Board 2004) ("The objector's failure to fully state the nature of his objections denies the respondent his oblitty to defend his petitions. Due process of law mandates an individual be adequately apprised of the complaint against him so as to be able to defend himself."); Blakemore v. Shore, 11-COEB-MWRD-03 (Cook Cty. Electoral Board 2012) ("[failure to] describe a potential defect that may or may not reside somewhere in the petition" by "provid[ing] specifics" is a "fatal pleading defect").
- 10. In this case, Objector has failed this minimum burden. If all of the facts (not including legal conclusions) alleged by Objector were true, Objector would still not be able to prove the validity of his objections.
- 11. As a preliminary matter, paragraph 6 of Objector's Petition is rambling, nonsensical and full of conclusory statements. Additionally, the first sentence of paragraph 6 is absurd and incorrect. While it is unclear whether paragraph 6 is attempting to state an objection, but in any event, paragraph 6 should be stricken as a matter of law.
- 12. For the reasons set forth herein, the Objector's Petition in insufficient in law and fact in that it does not state any legally sustainable claims and, as such, each allegation should be stricken, requiring dismissal of the entire Objector's Petition. However, as a

preliminary matter, it is first necessary to distinguish the applicable statutory requirements in this case versus those relied upon by Objector.

- I. Objections to the "Resolution to Fill a Vacancy in Nomination" Must Fail Because Paragraph 9 of Section 5/7-61 of the Election Code Controls in this Case and Objector Has Failed to State a Valid Objection Thereto
- 13. The Objector's Petition fails to state an actionable objection because it, seemingly, relies on the incorrect statutory authority upon which its objections are based. There is no requirement that Candidate in this case file a Resolution to Fill a Vacancy in Nomination and, thus, any objection concerning the form and requirements of a Resolution to Fill a Vacancy in Nomination is null.
- 14. As stated above, no candidate's name was printed on the March 15, 2016 General Primary Election ballot for the Democratic Party for nomination to the office of State Senator for the 26th Legislative District, State of Illinois. Nor did any write-in candidate obtain nomination by primary voters.
  - 15. Section 8-17 of the Election Code requires that:

"if there was no candidate for the nomination of the party in the primary, no candidate of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 75 days after the date of the general primary election. Vacancies in nomination occurring under this Article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this Code."

#### 10 ILCS 5/8-17.

16. Section 7-61 of the Election Code (10 ILCS 5/7-61) provides two distinct methods of filling vacancies in nomination for two different kinds of scenarios: (i) when a vacancy is created by virtue of there being a lack of candidate appearing on the primary

ballot, versus (ii) when a vacancy in nomination is created by other reasons like, for example, the death or disability of a candidate whose name did appear on the primary election ballot.

- 17. As detailed by the Illinois Supreme Court in Wisnasky-Bettorf v. Pierce, §7-61, paragraph 9 of the Election Code applies to situations where there was no original candidate on the ballot while paragraphs 3 through 8 of §7-61 do not. Pierce, 2012 IL 11253 at ¶21, 23.
- 18. The court in *Pierce* specifically concludes that paragraph 9, § 7.61 of the Election Code does not require the filing of a Resolution to Fill the Vacancy in situations where no candidate was nominated at the primary election as is the situation in the case at bar. *Id*.
- 19. According to the court in *Pierce*, under paragraph 9 of § 7-61 (read here in conjunction with §8-17), there are four general requirements for filling a vacancy in nomination under the circumstances like the case at bar:
  - a. The appropriate legislative committee nominates a person within 75 days after the date of the general primary election;
  - b. The designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office (with the circulation period beginning on the day the appropriate committee designates the person);
  - c. The designated person timely files, together, the following required documents:
    - i. His or her nominating petitions,
    - ii. Statement of candidacy,
    - iii. Notice of appointment by the appropriate committee, and
    - iv. Receipt for filing his or her statement of economic interests; and
  - d. The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9].

Pierce, 2012 IL 111253 at ¶21; 10 ILCS 5/7-61; 10 ILCS 5/8-17.

20. In this case, Candidate has satisfied all of the requirements of §7-61, paragraph 9 of the Election Code and Objector has failed to plead anything that *could* suggest

otherwise. To the extent that Objector has even stated a valid objection, Candidate is still entitled to judgment in her favor as a matter of law and all objections to her candidacy should be overruled. Each of Objector's allegations are discussed in turn as follows.

- a. Objections Alleging General Deficiencies in a "Resolution to Fill a Vacancy in Nomination" Have No Legal Basis in this Case
- 21. In part, Objector claims that Candidate should be denied access to the ballot due to certain, alleged deficiencies in Candidate's "Resolution to Fill a Vacancy in Nomination." See Objector's Petition, ¶6, 8, 9. There is no requirement that Candidate submit a Resolution to Fill a Vacancy in Nomination in this case and therefore all objections regarding said "Resolution" must fail.
- Objector claims that Candidate's nominating petitions, "must also contain the proper Resolution to Fill the Vacancy in nomination..." Objector's Petition, \*2. There is no attempt to distinguish or provide the specific, applicable statutory violation complained of in this case. It is clear on the face of the entire Objector's Petition that Objector is referencing a "Resolution to Fill a Vacancy in Nomination" as described in paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code. However, Objector's statement of law and basis for the subsequent objections is, simply, wrong. Objector's failure to recognize and distinguish the different requirements with respect to the different mandatory filings applicable to different types of vacancies in nomination is fatal to his objection.
- 23. The holding of *Pierce* is clear: the statutory requirement(s) relating to a candidate being required to file a "resolution to fill a vacancy in nomination" (as detailed in paragraph 3, 4, 5, and 6 of §7-61 of the Election Code) do not apply to cases in which no

<sup>&</sup>lt;sup>1</sup> The specific deficiency of the allegations contained in Objector's Petition, ¶10 (and subsequently ¶11-13) are discussed infra.

candidate's name appeared on the primary ballot and where no write-in candidate was nominated by primary voters. *Pierce*, 2012 IL 111253 at ¶¶18, 21, 23.

- 24. Paragraphs 5, 6, 8, 9 of Objector's Petition mention and/or allege some purported defect in the Resolution to Fill a Vacancy in Nomination. Not one of the defects complained of is legally recognizable and thus must be dismissed as a matter of law.
- 25. Candidate was under no obligation to file a Resolution to Fill a Vacancy in Nomination that complies with paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code. Paragraphs 3, 4, 5, and 6 of §7-61 do not apply to Candidate in this case. Instead, in order for Candidate to access the ballot, she was required to comply with <u>paragraph 9</u> of §7-61, which is devoid of any language regarding a "Resolution" and, therefore, based on Objector's Petition, no mandatory requirements could have been violated to jeopardize her candidacy.
- 26. Not a single objection contained in Objector's Petition assert an objection relevant to the language and requirements of §7-61, paragraph 9.
- 27. Thus, any arguments Objector *could* bring fail because the Objector's Petition is deficient on its face.
- 28. Specifically, Objector takes issue with the substance of the document attached as "Exhibit B" to the Objector's Petition.
- 29. Exhibit B" of Objector's Petition is titled "RESOLUTION TO FILL A VACANCY IN NOMINATION (Failure to nominate candidate at primary election)." Sco. Objector's Petition, Exhibit B.
- 30. No matter the substantive objections brought against the "Resolution" or the "Resolution to Fill a Vacancy in Nomination," (see Objector's Petition, ¶¶5, 6, 8, 9, and 14), the objections made, as alleged in Objector's Petition, are against a document that was not mandatory. As stated above, Candidate had zero obligation to file a Resolution to Fill a Vacancy in Nomination and thus, any objection to her "Resolution" is meritless.

- 31. Notably, Objector has not raised an objection to Candidate's "notice of appointment by the appropriate committee," nor has Objector asserted that Candidate failed to properly file a "notice of appointment by the appropriate committee" as required by paragraph 9 of §7-61 of the Election Code. At no point does Objector raise any objection or cite any legal authority related to the requirements of a "notice of appointment" or any other documents required by paragraph 9 of §7-61 of the Election Code.
- 32. Objector has simply failed to state an objection regarding something Candidate was required to file.
- 33. As stated above, §10-8 of the Election Code requires that objections be specific and "state fully the nature of the objection . . . ." 10 ILCS 5/10-8.
- 34. Objector is bound by the allegations contained in the Objector's Petition. Sec Delay v. Bd. of Election Com'rs of City of Chicago, 312 Hl. App. 3d 206, 209-10 (1st Dist. 2000) (holding that where, "the Board invalidated the plaintiff's nomination papers on a ground never raised in the objection, and in so doing, exceeded its statutory authority").

Objector is not permitted to amend his Objector's Petition beyond the ground stated in the original filing. Reyes v. Bloomingdale Twp. Electoral Bd., 265 Ill. App. 3d 69, 72 (2d Dist. 1994), opinion vacated in part, 265 Ill. App. 3d 69, (2d Dist. 1994).

- 35. Therefore, because Candidate had no obligation to submit a Resolution to Fill a Vacancy in Nomination (as described in paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code) and because Objector has failed to raise a specific objection regarding any of the requirements in §7-61, paragraph 9 of the Election Code, all objections regarding the "Resolution," "Resolution to Fill a Vacancy in Nomination," or "Exhibit B" should be stricken as a matter of law.
  - b. Alternatively, Paragraphs 6, 8, and 9 of Objector's Petition Should Still Be Overruled in their Entirety

- 36. In the alternative, even if Objector has sufficiently pled objections against the "Resolution," Objector is not able to prevail on the substance of said objections.
- 37. The objections raised in paragraphs 6, 8 and 9 of the Objector's Petition allege that due to purported defect(s) in what is written on certain form(s) submitted with Candidate's nominating petitions.
- 38. For the reasons stated herein (and above), Objector's legally baseless attempts to impose additional requirements on Candidate in order for her to access the ballot must fail and the objections should be dismissed or overruled.
  - i. The Objection that the "Resolution" does not represent the correct, appropriate Legislative committee is unfounded
- 39. There is nothing in the Objector's Petition to indicate Candidate did not comply with the requirements of paragraph 9, §7-61 of the Election Code (in conjunction with §8-17).
- 40. The Objector's Petition makes almost no mention of, and thus raises no objection to, the signatures on (or form of) Candidate's nominating petitions. Candidate's Statement of Candidacy, or her Receipt for filing her Statement of Economic Interest.
- 41. The "issue" of whether, as Objector alleges, the appropriate Legislative Committee nominated Candidate to fill the vacancy is discussed below. See infra, Part II.
- 42. Instead, paragraphs 6 and 8 of the Objector's Petition take issue that the "Resolution to Fill a Vacancy" has printed on it, "26th State Senate Central Committee of the Democratic Party" and "26th District State Senate Central Committee" (see Objector's Petition, Exhibit B), instead of "the 26th District Legislative Committee for the Democratic Party." See Objector's Petition, §8.
- 43. As discussed above, there is no basis in law (nor alleged in the Objector's Petition) that would impose the requirements of paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code on Candidate in this case.

- 44. Paragraph 9 of §7-61 only requires the filing of a "notice of appointment by the appropriate committee" without providing any further specification. That a document filed with Candidate's nominating petitions is labeled "Resolution to Fill a Vacancy in Nomination" does not somehow create increased legal burdens for Candidate.
- 45. Even if the "Resolution" filed with Candidate's nominating papers is deemed a "notice of appointment by the appropriate committee," there are no specific statutory requirements provided for what form the notice of appointment must be in or what information must be included on the notice's face, which renders the objectors thereto null.
- 46. Moreover, given the likely purpose of said "notice of appointment by the appropriate committee" to confirm that the individual filing nominating petitions was duly nominated by the appropriate legislative committee, it is clear from the face of the document (in conjunction with Exhibit A of Objector's Petition) that the appropriate Legislative Committee met and duly nominated Candidate to fill the vacancy. See Madden v. Schumann, 105 III. App. 3d 900, 902 (1st Dist. 1982) ("a nominating petition may be read as one complete document in order to achieve substantial compliance with the statute"); Samuelson v. Cock County Officers Electoral Bd., 2012 IL App (1st) 120581, ¶ 36.
- 47. Paragraph 8 of the Objector's Petition assert's that "[i]n fact, it is the Chairman of the County Central Committee of the Counties in the 26th Legislative District that make up the 26th Legislative District Committee." Objector's Petition, ¶8 (emphasis in original). Thus, to Objector's own point, the term "central committee" could be used to describe the makeup of a legislative committee for purposes of voting to fill vacancies in nomination.
- 48. Objector has failed to state one reason why strict compliance for semantics is required here. There is no question as to whether the makeup of the legislative committee was proper or was otherwise invalid.

- 49. The Chairman and Secretary of the appropriate Legislative Committee signed both the "Resolution" and the "Certificate of Legislative or Representative Committee Organization" (Objector's Petition, Exhibit A).
  - 50. Objector did not allege that the wrong committee nominated Candidate.<sup>2</sup>
- 51. It is clear on the face of the "Resolution" that the committee was for the Democratic Party in the 26th State Senate (legislative) district and is the same committee referenced in Exhibit A of the Objector's Petition.
- 52. That there may be a minor or technical error on a document that may be considered the "notice of appointment" (the contents or details of which are not defined by statute) cannot stand as a basis for invalidated a candidacy. See Samue'son v. Cook County Officers Electoral Bd., 2012 IL App (1st) 120581, ¶ 36 citing Siegel v. Lake County Officers Electoral Bd., 385 III. App. 3d 452, 460-61 (2d Dist. 2008) ("When a deviation from the Code is minor or technical in nature, and does not defeat the thrust, purpose, and effect of the statute, or 'affect the legislative intent to guarantee a fair and honest election,' it will not render that petition invalid"). Such a minor, technical error has no effect on the integrity of the electoral process, does not affect the showing of "grass-roots" support Candidate demonstrated with submission of nominating petitions, and should have no effect on the overall validity of Candidate's nomination.
- 53. Therefore, even if Objector's claims can survive the fact that no objection was made regarding a mandatory filing or requirement in this case, the objection that the "Resolution to Fill a Vacancy in Nomination" does not indicate the "appropriate committee" is erroneous and should be overruled.

<sup>&</sup>lt;sup>2</sup> In fact, paregraph 6 of Objector's Petition alleges that the "Resolution to Fill a Vacancy in Nomination is *false* and not in compliance . . ." Objector's Petition, ¶6 (emphasis added). Hence, from the face of the Objector's Petition, it seems that Objector is alleging that the defect is the that the "Resolution to Fill a Vacancy in Nomination" does not state exactly the name of the appropriate legislative committee.

- ii. Paragraph 9 of Objector's Petition has been brought in bad faith and the entire Objector's Petition should be dismissed pursuant to Daniel v. Daly
- 54. Additionally, Paragraph 9 of Objector's Petition should be stricken or overruled outright. Said paragraph claims, "The 'Resolution' does not state on what date the appropriate committee voted to nominate" Candidate. Objector's Petition, ¶9.
- 55. Even the most cursory review of the "Resolution" shows the "Date of meeting" is clearly provided, which is the same day indicated that the "Resolution" was signed and sworn to. The "Resolution" also clearly states that the committee "voted to nominate a candidate . . ." and that it "hereby nominates, designates, and appoints . . .." Objector's Petition, Exhibit B.
- 56. The allegations stating otherwise, as contained in Objector's Petitien, are absurd and could not have been brought in good faith.
- 57. Objector attached the "Resolution" to his Objector's Petition as Exhibit B. It is as if Objector did not read the objection or conduct even a superficial review of the allegations contained therein before signing and swearing a verification to the contrary. See Objector's Petition, Page 5.
- bad faith on Objector's part warrants dismissal of Objector's Petition, paragraph 9. Ser Daniel, 2015 IL App (1st) 150544 at ¶¶26, 32-33. Further, because Objector has sworn a false oath, the entire Objector's Petition should be dismissed or, alternatively, this Honorable Board should issue an order compelling Objector's appearance in order to determine "whether the [O]bjector had 'knowledge, information and/or belief formed after reasonable inquiry'." Daniel, 2015 IL App (1st) 150544 at ¶33.

- 59. Regardless, Objector has failed to allege upon what basis he purports that Candidate, in this case, was required to include the date of her appointment in any filing given that paragraph 4 of §7-61 of the Election Code does not apply here.
- 60. Hence, paragraph 9 of the Objector's Petition should be stricken or alternatively, overruled outright, along with the entire Objector's Petition.

# II. The Objections Alleging that the Appropriate Legislative Committee Was "Not Legally Organized" Fail on the Face of the Objector's Petition

- 61. The remaining objections in Objector's Petition, relating to where the Legislative Committee held its meeting, also fail on their face because Objector fails to allow facts that could provide the relief Objector seeks.
- 62. Paragraphs 10 through 13 of Objector's Petition<sup>3</sup> allege that "the 26" Legislative Committee was not properly organized" because "the meeting was clearly held 'outside the limits' of the 26th Legislative District". Objector's Petition, ¶¶12 and 13 (emphasis added).
- 63. There is no such thing as the "26th Legislative Committee" and an objection regarding whether it was properly organized has no bearing as to whether the Legislative Committee of the Democratic Party for the 26th Legislative District, State of Illinois was properly organized or on the ability of Candidate's to access the ballot.
- 64. However, assuming, arguendo, that Objector is referring to the Legislative Committee of the Democratic Party of the 26th Legislative District, State of Illinois, the Objector's Petition still fails on its face.

<sup>&</sup>lt;sup>3</sup> Paragraph 6 of Objector's Petition makes a general allegation that the "appropriate committee was not legally organized prior to the purported Resolution to Fill a Vacancy in Nomination that was purportedly signed on April 29, 2016." Objector's Petition, \*6. Candidate moves to strike this statement as being a conclusory, unsupported allegation that does not specifically state a basis for the objection it purports to bring. However, Candidate assumes, arguen to, that this general, conclusory allegation refers to paragraphs 10 through 13 of the Objector's Petition and therefore all argument made by Candidate in response to said paragraphs applies to paragraph 6 as well.

- Objector's Petition: "The Certificate of Legislative Committee Organization clearly specific value that the meeting was held on April 29, 2016 in Palatine in Lake County, which is not in the 26th Legislative District, but is within the 27th Legislative District." Objector's Petition, \*10 (emphasis in original).
- 66. Objector is wrong. Attached herewith and incorporated herein as "Exhibit A" is a copy of a list of registered voters who reside in the Village of Palatine, County of Lake, State of Illinois and all within the 26th Legislative District. The affirmative assertion by Objectors that "Palatine in Lake County . . . is not in the 26th Legislative District, but is within the 27th Legislative District" (Objector's Petition, \*10) is blatantly false. The remaining conclusory statements in Paragraphs 12 and 13 of Objector's Petition stem from the affirmative assertion. Therefore, all statements related to this objection baseless and should be dismissed.
- Objector's Petition regarding the legality of the legislative committee in this case, as an affirmative matter, attached herewith and incorporated herein as "Exhibit B" is an affidavit of the Chairman of the Legislative Committee of the Democratic Party of the 26th Legislative District, State of Illinois attesting, inter alia, to the district in which the Legislative Committee met.
- 68. Hence, any questions as to whether the appropriate legislative committee was "legally constituted" has been satisfied and, therefore, because no question of meterial fact remains, Candidate is entitled to judgment as a matter of law and the objections to be nomination should be overruled.

#### CONCLUSION

69. Illinois courts strongly favor ballot access for candidates who wish to run for

public office. See McGuire v. Nogaj, 146 III. App. 3d 280, 285 (19°6); Welch v. Johnson 147 Ph.

2d 40 (1992). Candidate was duly nominated by the appropriate legislative committee and has substituently

complied with the requirements to fill a vacancy in nomination in accordance with the applicable provisions

of the Election Code and controlling case law. Objector has not raised a single issue that could call into

question the validity of Candidate's candidacy and, thus, the Objector's Petition should be stricken and

dismissed and any objections to Candidate's nomination should be overruled.

WHEREFORE, the Candidate, KELLY MAZESKI, prays:

a. this Honorable Electoral Board GRANT the Candidate's Motion to Strike and

Dismiss Objector's Petition or, alternatively, GRANT Candidate's Motion for Summary Judgment;

b. this Honorable Electoral Board enter an order dismissing the Objector's Petition:

c. this Honorable Electoral Board enter its decision declaring that the name of KELLY MAZESKI as a candidate for the to the office of State Senator of the 20"

Legislative District, State of Illinois APPEAR on the OFFICIAL BALLOT of the

General Primary Election to be held on November 8, 2016;

d. that this Honorable Electoral Board award reasonable attorney fees and costs

necessary to defend in this action;

e. for such other and further relief as the Electoral Board may consider proper and

iust.

Respectfully Submitted,

/s/ Ross D. Sceler

One of the Attorneys for

Candidate-Respondent

Ross D. Secler, Esq.

ROSS D. SECLER & ASSOCIATES

30 North LaSalle Street, Suite 3250

Chicago, Illinois 60602

Telephone: (312) 853-8000

Facsimile: (312) 853-8008

renclar@chicagoelectionlaw.com

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#### NOTICE OF FILING & CERTIFICATE OF SERVICE

The undersigned, an Illinois licensed attorney, hereby certifies that on June 15, 2010 he caused this CANDIDATE'S MOTION TO STRIKE & DISMISS CRIECTOR'S PETITION OR. IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, to be filed with the State Officer's Electoral Board by sending same to the e-mail address of the General Councel of the State Board of Elections and Hearing Officer Tenuto, in accordance with the Rules of Procedure adopted in this proceeding, and that a true and accurate copy of same was duly served upon the Objector's counsel of record by including the e-mail address(es) on the appearance form(s) as a recipient of the e-mail transmission with which this document was filed

By:	/s/ Ross D. Secler
·	Ross D. Secler

Ross D. Secler ROSS D. SECLER & ASSOCIATES 30 North LaSalle Street, Suite 3250 Chicago, Illinois 60602 Telephone: (312) 853-8000

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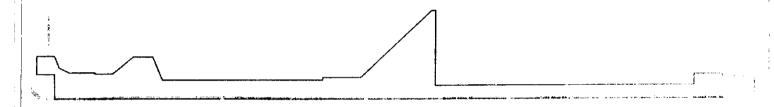
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#### MICHAEL DANFORTH v. KELLY MAZESKI

AFFIE	AVIT	OF
MIKE	BISSE	TT

STATE OF ILLINOIS	
COUNTY OF MCHENRY	,

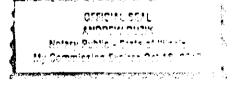
- I, Mike Bissett, being duly sworn, do hereby declare the following:
  - 1. I am over the age of 18 and am a resident of the State of Illinois. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
  - 2. I am currently the Chairman of the McHenry County Democratic Party, and held this office during the date in question.
  - 3. As the Chairman, I attended and participated in a meeting held for the purpose of filling a vacancy in nomination for the Democratic State Senate Candidate for the 26th Legislative District.
  - 4. This nomination meeting took place on April 29th, 2016.
  - 5. This nomination meeting took place in the 26th Legislative District.
  - 6. FURTHER AFFIANT SAYETH NOT.

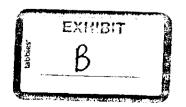
Mike Bissett

Signed and sworn to before me this 15th Day of June, 2016.

Notary Public

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PASSING UPON OF OBJECTIONS TO THE PETITIONS FOR ELECTION FOR THE OFFICE OF STATE SENATOR, 26th LEGISLATIVE DISTRICT, STATE OF ILLINOIS TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION

MICHAEL DANFORTH,	)	
	)	
Petitioner-Objector,	)	
	)	
<b>v.</b>	)	No. 16 SOEB GE 502
	)	
KELLY MAZESKI,	)	
	)	
Respondent-Candidate.	)	

#### **RESPONSE TO MOTION TO STRIKE AND DISMISS**

NOW COMES the Objector, MICHAEL DANFORTH, by and through his attorneys, ODELSON & STERK, LTD., and in Response to Candidate's Motion to Strike and Dismiss states as follows:

#### I. Introduction

Initially, the attorney for the Objector requests the Hearing Officer and Board to recognize the unprofessional attacks, accusations, disrespectful (to the profession, as well as the Election Bar) recitations by the attorney for the Candidate.

Counsel for the Objector, a member of the Election Bar for 44 years, notes the chastising by the 3-year veteran lawyer for the Candidate, of counsel for the Objector's "fundamental misunderstanding or misreading of the Election Code and controlling case law." (Paragraph 4 of the Motion to Strike and Dismiss).

The following are examples of rhetoric not appropriate in <u>any</u> pleading, and which add nothing to the merits – or authority of the case:

Paragraph 4 of the Motion to Strike and Dismiss:

"Objectors allegations reflect a fundamental misunderstanding or misreading of the Election Code and controlling case law..."

Paragraph 11 of the Motion to Strike and Dismiss:

"Objectors petition is <u>rambling</u>, <u>nonsensical</u>, and full of conclusory statements..."

• Paragraph 24 of the Motion to Strike and Dismiss:

"Not one of the defects complained of is legally recognizable."

• Paragraph 26 of the Motion to Strike and Dismiss:

"Not a single objection contained in Objector's Petition assert an objection relevant to the language and requirements of 7-61, paragraph 9."

• Paragraph 55 of the Motion to Strike and Dismiss:

"Even the most cursory review. . ."

• Paragraph 56 of the Motion to Strike and Dismiss:

"The allegations . . . are <u>absurd</u> and <u>could not have been brought in good faith . . ." (Emphasis added)</u>

Paragraph 57 of the Motion to Strike and Dismiss:

"It is as if objector did not read the objection or conduct even a superficial review of the allegations contained therein before signing and swearing a verification to the contrary."

These inflammatory, discourteous, and unprofessional insults are warned against by the Illinois Supreme Court and other regulatory agencies. Counsel for the Objector notes the unwarranted attempts to discredit the attorney for the Objector in an attempt to discredit the objections.

The following will be a simple response to clear, concise, and straightforward objections.

#### II. The Appropriate Democratic Committee to Fill a Legislative Vacancy

As recognized by the Candidate in the Motion to Strike in Paragraph 1, the statutory committee authorized to fill a vacancy in nomination for a State Senate seat is the "Legislative Committee" (of the political party) for the appropriate Legislative District. The Election Code, at 5/8-5 clearly sets forth who is on the committee, when the committee must organize, and where the committee must meet.

The Election Code could not be clearer at 5/7-61 when mandating the procedures to fill a vacancy in ¶9:

"...a vacancy in nomination shall be filled only be a person designated by the appropriate committee of the political party..." (Emphasis added)

Although the Candidate, in Paragraphs 4 through 12 argues 5/10-8 as to the objections needing to be specific, the legal allegations as to the appropriate committee could not be clearer. The proof is submitted by the document filed by the Chairman of the 26<sup>th</sup> District State Senate Democratic Central Committee entitled "Resolution To Fill A Vacancy In Nomination," attached to the Objector's Petition and a part of the vacancy filling. This document clearly identifies in the second "Whereas" clause; in the "Be It Resolved" clause; and, under the signatures of the Chairman and Secretary, the 26<sup>th</sup> District State Senate Democratic Central Committee. The Election Code, at 5/7-8(a), provides for a State Central Committee of the particular party. This Central Committee does not nominate candidates to fill vacancies in nomination, but serves the functions as described in 5/7-8.

The challenge to the papers filed and the qualifications pursuant to the Election Code is not the Resolution To Fill A Vacancy In Nomination as being the proper – or improper form. The clear challenge, and objection as set forth in Paragraphs 8 and 6 in the Objector's Petition, is

to the <u>inappropriate appointment</u> of the eandidate by virtue of an <u>inappropriate committee</u> seemingly making the appointment. The numerous paragraphs (13-53) attempting to discredit the clear objection to the inappropriate appointment by the inappropriate committee attempt to lead the argument away from the legal insufficiencies and violation of mandatory provisions of the Election Code.

The Candidate cites the *Wisnasky-Bettorf v. Pierce* case as his authority to defeat this objection. *Wisnasky*, 2012 IL 111253 (S.Ct. reversed Appellate Court). We join in on the Candidate's reliance on *Wisnasky* and ask the Hearing Officer to rely on its holding. We could not agree more that paragraphs 3 through 8 of 5/7-61 do not apply in this matter: however. Paragraph 9 of 5/7-61 clearly does apply – as stated by the Supreme Court. A clear reading of the holding at \$21 sets forth Objector's case herein:

"In such situations, paragraph 9 provides that the vacancy in nomination may be filled only when the following four conditions are met:

- (1) the person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question,
- (2) the designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the day the appropriate committee designates that person,"
- (3) the designated person has filed, together, the following required documents, within 75 days after the day of the general primary: "his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing his or her statement of economic interests," and
- (4) "[t]he electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9]."

10 ILCS 5/7-61 (West 2010).

Although no "Resolution" need be filed in paragraph 9 filings, the Court was clear that the vacancy in nomination must be filled by the "appropriate committee of the political party." and a "notice of appointment" must be filled.

Thus, the Candidate can dance around through 40 paragraphs (13-53) attempting to rename, discredit, confuse or otherwise misname the objection, but the plain and simple answer is that the appropriate committee of the political party <u>did not</u> designate a candidate to fill the vacancy in nomination. That is the allegation in Paragraph 8 and 6. That is the objection – not that the Candidate should, or should not have filed a "Resolution."

#### III. Date Vote Taken by Inappropriate Committee to Nominate the Candidate

In Paragraphs 54-60 of the Motion to Strike and Dismiss, the Candidate again attacks the Objector (and counsel for the Objector) alleging a "bad faith" objection, including insults in Paragraphs 55, 56 and 57. Rather than accusing the Objector of "bad faith" and failing to "read" the Resolution, perhaps the focus should have been on the objection itself.

The only date on the "Resolution" is the date found on the lower left hand corner. indicating "Date of Meeting: April 29, 2016." There is clearly no indication when a vote was taken, and if it was at that meeting. Further, as indicated on the petition sheets in the preamble and circulator's affidavit, the 26<sup>th</sup> Legislative District Committee of the Democratic Party (the correct and appropriate committee pursuant to statute) met and selected the Candidate at an unspecified date. (See Preamble and Circulator's Affidavit on each sheet of the "Petition")

Without the nomination date, we do not know the date circulation of the petitions can begin. The Election Code, at 5/7-61, paragraph 9, provides: "The circulation period for those petitions begins on the day the appropriate committee designates that person."

Neither the "Resolution" nor "Petitions" set forth the day the vote took place to designate the Candidate. The date of the meeting of the 26<sup>th</sup> State Senate Central Committee of the Democratic Party, as specified in the Resolution, fails to have the appropriate committee designate a candidate and specify when the vote took place.

# IV. The Wrong Committee was Organized Outside of the Appropriate Legislative District

In Paragraphs 61-68, the Candidate again attacks the "form" of the question and allegations made in the objection, to the <u>place</u> where the organizing committee held its meeting. The objection and statutory violation is simple. The meeting to organize the <u>appropriate</u> committee (which was not the named committee that designated the Candidate in the "Resolution") pursuant to 10 ILCS 5/8-5, which was the Legislative Committee of the 26<sup>th</sup> Legislative District for the Democratic Party, was clearly held in the City of Palatine. County of Lake. This was the certification made by Michael Bissett, Chairman of the 26<sup>th</sup> Legislative District Committee of the Democratic Party. (*See* Certificate of Legislative Committee Organization filed with the Petitions).

The Candidate does not contest the statutory requirement in the Election Code at 5/8-5 requiring the organization of the appropriate committee to be held within the limits of the Legislative District to be filled.

Candidate alleges the meeting was held in the 26<sup>th</sup> Legislative District and attaches voting records of voters living in "unincorporated" Palatine, where no buildings exist except for residential structures. Further, the Affidavit of Michael Bissett fails to state where in the 26<sup>th</sup> District the organizational meeting was held. The Affidavit and arguments of the Motion are all

factual, and not subject to a Motion to Strike and Dismiss, which, of course, attacks legal

insufficiencies in an objection.

No attack on the legal sufficiency of the 5/8-5 violation is made – only as to the factual

circumstance that clearly appear on the Certificate of Legislative Committee Organization, which

certifies the meeting took place in Lake County, in the City of Palatine, which is not within the

26th Legislative District.

WHEREFORE, the Objector, MICHAEL DANFORTH, respectfully requests that the

Objections be granted, and the relief requested in the Objector's Petition be allowed.

Respectfully submitted.

MICHAEL DANFORTH, Objector

By: /s/Burton S. Odelson\_\_\_\_

Burton S. Odelson

Burton S. Odelson Luke J. Keller

ODELSON & STERK, LTD.

3318 West 95th Street Evergreen Park, IL 60805

(708) 424-5678

(708) 424-5755 - fax

attyburt a aol.com

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# BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO RESOLUTIONS TO FILL VACANCIES IN NOMINATION SEEKING TO PLACE ESTABLISHED POLITICAL PARTY CANDIDATES ON THE BALLOT FOR THE NOVEMBER 8, 2016 GENERAL ELECTION

IN THE WATTER OF.	
Michael Danforth,	)
Petitioner(s) - Objector(s),	)
V.	) 16 SOEB GE 502
Kelly Mazeski,	)
Respondent(s) - Candidate(s).	)

INITHE MATTER OF

## RECOMMENDATION OF THE HEARING OFFICER TO THE GENERAL COUNSEL

This matter coming before the Illinois State Board of Elections sitting as the duly constituted State Officers Electoral Board and the undersigned Hearing Officer, pursuant to Appointment and Notice, makes the following Recommendation.

#### L. CASE MANAGEMENT CONFERENCE

A Case Management Conference was held on June 13, 2016, following the calling of the cases. Burton Odelson filed an Appearance on behalf of the Objector. Ross D. Secler filed an appearance on behalf of the Candidate. It was indicated the matter would be decided based on the motions to be filed pursuant to the schedule set forth in the Rules at Appendix B. A status was scheduled for June 22, 2016, following the conclusion of the briefing schedule.

#### II. BACKGROUND

No candidate's name appeared for the Democratic Party on the General Primary ballot conducted March 15, 2016, for the office of State Senator in the 26<sup>th</sup> Legislative District nor was

anyone nominated for said office as a write-in candidate. Thus, a vacancy in nomination was created.

The appropriate entity to nominate a candidate, in accordance with the provisions of Section 10 ILCS 5/1-1, et seq., is the Legislative Committee of the Democratic Party for the 26<sup>th</sup> Legislative District.

Candidate Kelly Mazeski was selected and timely filed her nomination petitions,

Statement of Candidacy, Certificate of Legislative or Representative Committee Organization and Resolution to Fill a Vacancy in Nomination.

An Objection was timely filed alleging the following deficiencies:

- 1. The "Resolution to Fill a Vacancy in Nomination" (Resolution) does not name the appropriate legislative committee to fill the vacancy in nomination.
- 2. The "Resolution to Fill a Vacancy in Nomination" does not state the date on which the committee met and voted to nominate the Candidate.
- The appropriate Legislative Committee was not legally organized prior to Candidate's appointment.
- 4. Section 5/8-5 of the Election Code requires the meeting of the appropriate legislative committee to be held "in the limits of the district." The meeting in question was held outside the limits of the 26<sup>th</sup> Legislative District.

#### III. MOTIONS

The following Motions were timely filed and will be discussed in detail.

(A) <u>Candidate's Motion to Strike and Dismiss Objector's Petition, or, in the Alternative, Motion for Summary Judgment</u>

The thrust of the Candidate's argument is that any objection to the "Resolution to Fill a Vacancy in Nomination" must fail because Paragraph 9 of Section 5/7-61 of the Election Code is

controlling. Paragraph 9 of Section 5/7-61 does not require the Candidate to file a Resolution when no Candidate was nominated at the General Primary. The Candidate contends *Wisnasky* – *Bettord v. Pierce*, 965 N.E. 2d 1103, 358 III. Dec. 624, 2012 IL 111253 (2012), governs. Therein, the Illinois Supreme Court stated paragraph 9, and not paragraphs 3-8, in Section 7-61, apply in those situations where no candidate's name appeared on the General Primary ballot and no one was nominated as a write-in.

The *Pierce* ruling sets forth the requirements to fill a vacancy in nomination in those factual situations, as in the present matter, when a name did not appear on the General Primary ballot and no one was nominated as a write-in candidate:

- (1) The person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question.
- (2) The designated person obtain nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the day the appropriate committee designated that person."
- (3) The designated person has filed together, the following required documents, within75 days after the day of the general primary:
  - (i) His or her nominating petitions.
  - (ii) Statement of Candidacy,
  - (iii) Notice of appointment by the appropriate committee, and
  - (iv) Receipt of filing his or her statement of economic interests, and
  - (v) The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9].

Pierce, 2012 IL 111253 at ¶ 21.

Additionally, the Candidate states the Objector is precluded from objecting to the "notice of appointment by the appropriate committee" because that issue was not raised in the Objection. Alternatively, Candidate contends the appropriate legislative committee met and nominated the Candidate and satisfied the "notice of appointment by the appropriate committee" requirement when one examines the "Certificate of Legislative or Representative Committee Organization" form in the nomination petitions filed by the Candidate.

Finally, the Candidate challenges the Objector's assertion that the meeting was held outside the limits of the 26<sup>th</sup> Legislative District. The Candidate submitted Exhibit B, an Affidavit that states the meeting took place in the 26<sup>th</sup> Legislative District. At the request of the Hearing Officer, a subsequent Affidavit was submitted to provide the exact location the meeting took place.

#### (B) Response to Motion to Strike and Dismiss

#### (1) The Appropriate Democratic Committee to Fill a Legislative Vacancy

The Objector argues that the statutory committee authorized to fill a vacancy in nomination for a State Senate seat is the "Legislative Committee" for the appropriate Legislative District. Furthermore, Objector points out that Section 5/8-5 of the Election Code spells out who comprises the committee, when the committee must organize and when the committee must meet. Additionally, it is noted that Section 5/7-61 provides "... a vacancy in nomination shall be filled by a person designated by the appropriate committee of the political party ... (emphasis added by Objector).

Objector points out that "Legislative Committee" is the appropriate designation to fill a vacancy for State Senate in the 26<sup>th</sup> Legislative District. The "Resolution" attached to the Candidate's petitions, however, states "32<sup>nd</sup> Senate District Central Committee".

Objector does not challenge the form of the "Resolution". It is pointed out the State Central Committee has functions spelled out in Section 5/7-8. Those functions do <u>not</u> include

nominating candidates to fill a vacancy in nomination. In essence, Objector argues the inappropriate committee made an inappropriate appointment.

Objector agrees that the *Pierce* case is controlling and only Paragraph 9 of Section 5/7-61 applies and points out in his motion:

Although no "Resolution" need be filed in paragraph 9 filings, the Court was clear that the vacancy in nomination must be filled by the "appropriate committee of the political party" and a "notice of appointment" must be filed.

The Objector argues the appointment was not made by the "Legislative Committee" invalidates the appointment.

### (2) <u>Date Vote taken by Inappropriate Committee to</u> Nominate the Candidate

Objector points out the only date on the "Resolution" is found in the lower left hand corner, to wit, "Date of Meeting, April 29, 2016". Whether a vote was taken at the meeting is not clear. The absence of the date the vote was taken makes it impossible to determine when the circulation period begins.

## (3) The Wrong Committee was Organized Outside of the Appropriate Legislative District.

In addition to arguing the wrong committee made the appointment, the Objector points out that stating in an Affidavit and attaching voting records of voters who reside in the 26th Legislative District in "unincorporated" Palatine where only residential structures exist does not adequately satisfy the requirement in Section 5/8-5 that the meeting be held within the limits of the district. This will be discussed in more detail when the affidavits are discussed.

#### IV. ANALYSIS

Initially, a cursory review of the relevant statutes results is necessary.

Section 5/7-61 states, in relevant part, "... a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party ..."

The appropriate committee to fill a vacancy in nomination when no candidate has been nominated for State Senator at the General Primary Election is the Legislative Committee.

(Section 5/8-5). Section 5/8-5 also provides that the chairman of each county central committee of such party in any portion of which county is included within such district, when the district is located outside Cook County, shall serve on the Legislative Committee.

Wisnasky – Bettorf v. Pierce, 2012 II. 111253, (2012), discusses whether or not a resolution is required to be filed when a vacancy in nomination is created because no candidate was nominated at the General Primary Election. Both sides agree that paragraphs 3 through 8 of Section 5/7-61 are not applicable because a resolution need not be filed with the nomination petitions. In the present factual situation only paragraph 9 applies as set forth in Pierce:

¶ 21 In such situations, paragraph 9 provides that the vacancy in nomination may be filled only when the following four conditions are met: (1) the person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question, (2) the designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the date the appropriate committee designates that person," (3) the designated person has filed, together, the following required documents, within 75 days after the day of the general primary: "his or her nominating petitions, statements of candidacy, notice of appointment by the appropriated committee, and receipt of filing his or her statement of economic interest," and (4) "[t]he electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9]."

In the case at bar, the Candidate submitted both a "Certificate of Legislative and Representative Committee Organization" and a "Resolution to Fill a Vacancy in Nomination."

The "Resolution" states "26<sup>th</sup> State Senate Central Committee" and "26<sup>th</sup> District State Central Committee" rather than "26<sup>th</sup> Legislative District Committee".

Objector contends that since the committee was inappropriate, the subsequent appointment was inappropriate. The Candidate argues, based on the ruling in *Pierce*, the "Resolution" was not required to be filed and therefore cannot be challenged. Objector responds that while a "Resolution" need not be filed in Paragraph 9 filings, the vacancy in nomination must be filled by the appropriate committee <u>and</u> a notice of appointment filed. Furthermore, the Candidate contends the Objector cannot challenge the failure to file a Notice of Appointment because that was not raised as an issue in the Objection.

There appears to be two primary issues: (1) whether the appropriate committee made the appointment, and (2) was a Notice of Appointment by the appropriate committee submitted.

The 26<sup>th</sup> Legislative Committee is comprised of portions of Lake, McHenry, Kane and Cook Counties. The Certificate of Legislative or Representative Committee organization was signed by Michael Bissett as Chairman and Terry Link as Secretary. Mr. Link is the Lake County Democratic Party Chairman while Mr. Bissett is the McHenry County Democratic Party Chairman. Reference is made to the 26<sup>th</sup> Legislative District and the committee met April 29, 2016.

The "Resolution" states a candidate was not nominated for State Senator in the 26<sup>th</sup> District at the March 15, 2016 Primary Election. Rather than "Legislative Committee", the "Resolution" states "26<sup>th</sup> State Senate Central Committee" and "26<sup>th</sup> District State Central Committee". Nevertheless, it is apparent the "Resolution" signed by Bissett and Link was intended to nominate a candidate for the office of State Senator. The failure to insert "Legislative Committee" should not invalidate the nomination since it was signed by the appropriate persons. Thus, there appears to be substantial compliance.

The second factor to be considered is whether the appropriate Notice of Appointment was submitted. The Candidate contends the Objector is precluded from raising an issue as to the Notice of Appointment because it was not raised in the objection. I respectfully disagree. It is apparent the validity of the appointment was intertwined with the issue of whether the appropriate committee made the appointment.

I conclude the "Resolution" had the effect of appointing the Candidate for the following reasons:

- Signed by the proper persons who comprised the 26<sup>th</sup> Legislative Committee, to wit, Bissett and Link,
- Specifies the office to be filled and the appropriate political party,
- · Designates the name of the candidate, and
- States the date of the meeting.

The date on which the candidate was nominated is also challenged. While April 29, 2016, is listed as the "date of meeting", the Objector contends the date the Candidate was nominated is not specified. Failure to list the date of nomination is significant because the circulation period cannot begin until the Candidate has been nominated.

Though not specified, it is a logical conclusion and a reasonable inference that the "date of meeting" is also the date the nomination occurred. Furthermore, an Affidavit from Michael Bissett states the nomination meeting took place on April 29, 2016. It would have been preferable to specify "date of designation and appointment meeting: April 29, 2016."

Finally, whether or not the meeting took place within the 26th Legislative District is also challenged. The "Certificate" states the meeting was held on April 29, 2016, in the City of Palatine, County of Lake. Objector states that Palatine is located within the 27th Legislative District. Records submitted by the Candidate established that certain residential homes in

Palatine are located in the 26<sup>th</sup> Legislative District within Lake County. Additionally, the Candidate submitted an Affidavit by Michael Bissett along with his Motion that stated "the nomination meeting took place in the 26<sup>th</sup> Legislative District.

The Hearing Officer sought clarification from the Candidate as to the precise location of the meeting. An affidavit was submitted by Michael Bissett, Lake County Chairman of the Democratic Party, on June 24, 2016, which provided an address in par. 12.

The Objector timely submitted a Response and Motion to Strike Affidavit of Michael

Bissett on the basis that only par. 12 addresses the direct inquiry. Furthermore, the Affidavit was characterized, other than par. 12, as "all other paragraphs attempt to explain the documents filed and are beyond the sole inquiry of the Hearing Examiner and should be stricken."

I agree that only par. 12 is relevant to the specific issue as to the location of the meeting. Accordingly, any paragraphs in the affidavit other than par. 12, will be stricken and not considered.

As to the issue of where the meeting took place, it was not within that portion of Palatine located within the 26<sup>th</sup> Legislative District. Nevertheless, it did take place within the 26<sup>th</sup> Legislative District. While the "Certificate of Legislative or Representative Committee Organization" did state Palatine, I do not find this error to be fatal.

#### V. RECOMMENDATION

Initially, it should be pointed out that Objector's attorney cited examples of "the unprofessional attacks, accusations, disrespectful (to the profession, as well as the Election Bar) recitations by the attorney for the Candidate." Without discussing the details, I agree it is beyond advocacy and it was not necessary to resort to what I characterize as personal and unprofessional attacks.

The errors pointed out by the Objector in the Certification of Legislative or Representative Organization" and "Resolution to fill a Vacancy in Nomination" are the result of careless practices that invite objections. Nevertheless, the errors noted are not enough to warrant the Candidate's removal from the ballot.

For the reasons set forth above, I recommend the objection be overruled.

**DATED**: June 29, 2016

James Tenuto, Hearing Officer

Jana Tanuto

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE PETITIONS FOR ELECTION FOR THE OFFICE OF STATE SENATOR, 26th LEGISLATIVE DISTRICT, STATE OF ILLINOIS TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION

MICHAEL DANFORTH,	)	
	)	
Petitioner-Objector,	)	
	)	
<b>v.</b>	)	No. 16 SOEB GE 502
	)	
KELLY MAZESKI,	)	
	j j	
Respondent-Candidate.	)	

## OBJECTOR'S EXCEPTIONS TO RECOMMENDATION OF THE HEARING OFFICER TO THE GENERAL COUNSEL

NOW COMES the Objector, MICHAEL DANFORTH, by and through his attorneys. ODELSON & STERK, LTD., and pursuant to Rule 5, brings the following Exceptions to the Recommendation of the Hearing Officer to the General Counsel and Board. The Objector respectfully requests the General Counsel and Board not follow the Recommendation of the Hearing Officer, and grant the relief requested in the Objector's Petition. The following are the Exceptions and law supporting the Objector's Petition.

# I. Substantial Compliance is Not the Appropriate Standard When Political Party Leaders Attempt to Nominate a Candidate

This is an interesting case. It is not the very typical instance when candidates attempt to qualify for a ballot position by gathering signatures of the electorate who request his or her name be put on the ballot at the primary or general election. Here, we have two political party leaders. the Chairman and Secretary of the "Central" Committee, nominating their candidate to fill a vacancy created when no one ran in their primary election. The supporting petitions do ask that

the nominee be put on the ballot, but only in support of the designation by the political party leaders.

Thus, the "substantial compliance" theory and practice in the line of cases applicable to the candidate/electorate nominations should not, and is not, the standard, when two, three, or more political party leaders choose the candidate in place of the electorate. Rather, the political party leaders should be held to "strict compliance" and strict scrutiny to the mandatory provisions of the Election Code. This "short cut" method of nomination subverts the "people" initiated candidacies typically brought forth by grassroots, everyday registered voters.

The courts have given great leeway to allow ballot access to those who make mistakes in the petition gathering – filing process. This "relaxed" standard should not – and does not, apply to the "short cut" to ballot access where the primary system has been avoided and the political party leaders take the "easy way" to the ballot through 10 ILCS 5/7-61, 10 ILCS 5/8-5 and 10 ILCS 5/8-17. This "easy access," shortcut method I will call the "Fast Pass," must be strictly complied with by the political party leaders since it runs contrary to the very core of our democratic election roadmap from the Australian Ballot Law to our modern electronic voting: the heart of gaining a ballot spot – and ultimate election, is running against an opponent after the electorate has given the candidate a "modicum" of support through the petition process.

Although the General Assembly has seen fit to provide the mechanism to fill a vacancy in nomination, it is not what our forefathers had in mind when free and equal elections were prescribed by the U.S. and Illinois Constitutions. Thus, although we currently have the "Fast Pass" to the ballot mechanism, this Board – and the courts, should apply a "strict compliance" and "strict scrutiny" test to the "Fast Pass" provisions of the statute, since those provisions run contrary to the constitutional and statutory means of the voter-based, candidate support, access to

the ballot. This "political" nomination path to the ballot is far easier to subvert and invade the integrity of the electoral process, than the petition gathering, grassroots method of gaining ballot access.

# II. Law Regarding Ballot Access: Constitutional Rights v. Political Privilege

### A. Mandatory v. Directory - The Legislature May Regulate Political Party Nominations

"The right of political parties to make nominations for an office is not enumerated in the Constitution, but a 'political privilege.' The legislature may choose to regulate the 'political privilege'...." Sutton v. Cook County Officers Electoral Board, 2012 IL App (1st) 122528.

The legislature has chosen to regulate the "political privilege" of putting a candidate on the ballot <u>after</u> the voters have gone to the polls in the primary, but found no candidate for a particular office to nominate. The result is spelled out in Articles 7 and 8 of the Election Code which provides clear penalties for noncompliance with the clear, unambiguous directions.

### 10 ILCS 5/8-1:

"The nomination of all candidates for Members of the General Assembly...shall be made in the manner provided in this Article 8 [10 ILCS 5/8-1, et seq.] and not otherwise. The name of no person, nominated by a party required hereunder to make nominations of candidates for members of the General Assembly shall be placed upon the official ballot to be voted at the general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article 8." (Emphasis added).

Unless the political leaders follow the mandated directions in Article 8 ("and not otherwise"), <u>no</u> person's name shall appear on the ballot. Thus, the ultimate sanction of removal from the ballot is imposed if the political leaders stray from the mandates of the Election Code.

- 1. The "appropriate" committee did not nominate the Candidate:
- 2. No date of selection was specified on the "Resolution":
- 3. No Notice of Appointment was filed: and
- 4. The meeting, as sworn and certified to by the Chairman and Secretary, was not in the 26<sup>th</sup> Legislative District.

Again, 5/8-17 provides the penalty that:

"...<u>no candidate</u> of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate...."

Article 7 also provides, in mandatory language, the penalty for noncompliance:

"...nomination of all candidates...shall be made in the manner provided in this Article 7 and not otherwise." 10 ILCS 5/7-1. (Emphasis added).

And, once again, in 10 ILCS 5/7-61, ¶9:

"...a vacancy in nomination shall be filled only by a person designated by the appropriate committee...."

As our Supreme Court set forth in *Pullen v. Mulligan*, 138 III.2d 21, 46, 149 III.Dec. 215. 561 N.E.2d 585 (1990):

"Statutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision."

Clearly, it is directed by the legislature in 10 ILCS 5/8-1, "...and not otherwise.", and

"The name of <u>no</u> person...shall be placed upon the official ballot...unless such person <u>shall</u> have been nominated...under the provisions of this Article 8."

And again in 10 ILCS 5/8-17:

"...<u>no</u> <u>candidate</u>...may listed on the ballot...unless the legislative...committee of the party nominates a candidate..."

And, as also set forth above in 5/7-1 and 5/7-61, the clear, plain language of the statutes provides the penalty for noncompliance in four different sections of the applicable statutes.

# B. The Provisions Regulating the Process of Political Party Leaders Nominating "Fast Pass" Candidates are Mandatory and Not Subject to a "Substantial Compliance" Test

As set forth above, Articles 7 and 8 clearly set forth, in mandatory, clear language, the necessary elements for political party leaders to nominate a candidate to run in the general election after the party has chosen to bypass the primary and not run a candidate. This process should be — and is, treated differently by the General Assembly and the courts, then the grassroots, citizen candidate petition process.

In Zerante v. Bloom Township Electoral Board, 287 III.App.3d 976 (1997), the Appellate Court held 7-61 mandatory and removed the political party nominee from the ballot for failure to specify the date when the candidate was selected on the Resolution to Fill a Vacancy. Although this was prior to the 2009 amendment to 5/7-61, the court spoke to the requirements in the statute and the reasoning as to why the filling of vacancies in nomination required mandatory compliance with the provisions.

If a statute is clear and unambiguous, and also provides a penalty for failing to comply with its provisions, it will be construed as mandatory.

"In other words, when a statute specifies what result will ensue if its terms are not complied with, then the statute is deemed mandatory." *Simmons v. DuBose*, 142 III.App.3d 1077, 97 III.Dec. 150, 450 N.E.2d 586.

Marquez v. Aurora Board of Election Commissioners, 357 III.App.3d 197, 293 III.Dec. 567, 828 N.E.2d 877 (2005).

Our Supreme Court acknowledged that it must look at the legislative intent of the statute in order to determine whether it is a mandatory or directory provision. *Pullen*, 138 Ill.2d 21, 46: *People v. Robinson*, 217 Ill.2d 43 (2005). When the, "...statute prescribes a consequence for

failure to obey a statutory provision, that is very strong evidence the legislature intended that consequence to be mandatory," *Robinson*, at 54.

Again, our Supreme Court, in deciding a matter against the Secretary of State and State Board of Elections, and others, found 10 ILCS 5/7A-1 unconstitutional as it related to judges seeking retention in *O'Brien v. Jesse White, et al.*, 218 Ill.2d 86 (2006). The court, citing *People v. Robinson, Id., Marquez v. Aurora Board of Election Commissioners, Id.*, and other cases, found that an Election Code statute is mandatory when its, "provision specifies the consequences of noncompliance." *O'Brien*, at 97, 98.

There is no doubt that the sections pertinent to this matter, cited above, provide a consequence for noncompliance. Section 5/8-1 has, "and not otherwise"; "no person...shall be placed on the ballot"; "shall have been nominated under the provisions of this Article 8." Following, in 5/8-17, "...no candidate of that party may be listed on the ballot...."

Both sections are punitive, recite consequences, and relate to the party leaders complying with the statutes in question.

Likewise, 5/7-1 ("nomination of all candidates shall be made in the manner provided in this Article 7 and <u>not otherwise</u>); and 5/7-61 ("vacancy...shall be filled <u>only</u> by a person designated by the appropriate committee") also have disqualifying consequences if the provisions of the statute are not followed.

Very recently in *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 L 118929, our Supreme Court again visited the mandatory requirements of the Election Code. Citing with approval, *O'Brien*, *Id.*, and *People v. Robinson*, *Id.*, the court stated:

"The mandatory-directory dichotomy concerns the consequences of failure to fulfill an obligation. *i.e.*, whether "the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates."

\* \* \*

"If a statute prescribes a consequence for failing to obey its provisions, that is a strong indication that the legislature intended it to be mandatory." *Id.*, at 96, 301 Ill.Dec. 154, 846 N.E.2d 116.

The court methodically recites the reasoning an unambiguous provision of the Election Code is mandatory, not directory, with "substantial compliance" not being the appropriate relief from the mandate of the law.

"Generally speaking, requirements of the Illinois Election Code are mandatory, not directory." *Purnell v. Municipal Officers Electoral Board*, 275 Ill.App.3d 1038, 1039, 212 Ill.Dec. 360, 657 N.E.2d 55 (1995); *Kellogg v. Cook County Illinois Officers Electoral Board*, 347 Ill.App.3d 666, 670, 283 Ill.Dec. 320, 807 N.E.2d 1161 (2004).

Jackson-Hicks, Id., at ¶23.

Very similar to the facts herein, the words "not less than" were the key words that provided the Court with the necessary "consequence" to find the statute in question mandatory. Getting "close" to complying with the statute is not good enough. Compare the wording in 5/8-1, "and not otherwise", and in 5/7-1, "and not otherwise", with "not less than", as used in 5/10-3. the section analyzed in *Jackson-Hicks*. Applicable herein, the court stated at ¶31:

"Implicit in the law's provision that nominations may be made through nomination papers containing "not less than" the required minimum numbers of signatures is that nominations may *not* be made through nomination papers containing a number of signatures which *is* less than the minimum required by law. The latter proposition is a corollary of the former. It was no more necessary for the legislature to explicitly state the consequence of failing to meet its fixed numerical threshold that it would be in the case of the final election returns."

Thus, nominations made by political leaders to "Fast Pass" their chosen candidates to the general election ballot after bypassing the primary process, may <u>not</u> be made through a nomination process that comes "close" to being the right committee: that comes "close" to the correct procedure as set forth in the statute (Resolution to Fill a Vacancy rather than a Notice of Appointment): that comes "close" to stating the date of selection (by referring to the date of the meeting): or that the meeting to select a candidate comes "close" to taking place in the appropriate District (26th), but not where the party leaders certified in their certification.

"Runners-up have no claim to office on a theory that they came close enough. So it has always been in American electoral politics. So it remains."

Jackson-Hicks, at ¶31.

\* \* \*

"There is no close enough."

Jackson-Hicks, at ¶37.

Finally, the court, in analyzing the signature requirement provisions in 5/10-3 and 5/10-3.1 of the Code states:

"That is the standard the Election Board was bound to follow. It is the standard we are required to enforce. To adopt the Mayor's position instead would require us to disregard the clear, unambiguous and mandatory language of the statute and graft onto it exceptions and limitations the legislature did not express. As noted at the outset of this opinion and confirmed by our election law jurisprudence, that is something the courts may not do."

Jackson-Hicks, at ¶35.

This matter is not a simple "substantial compliance," he came "close" enough, case. The General Assembly was careful in providing clear, unambiguous requirements for those candidates to be put on the general election ballot by the political leaders – and not the people.

The directions and mandate of our Supreme Court must be strictly followed for the "Fast Pass" procedures, which run contrary to the design of citizen initiated petitions and candidacies as set forth in our Constitution and statutes.

# III. Hearing Officer Applied Less Than Substantial Compliance Test and Certainly Not Mandatory Compliance Standard

The Hearing Officer was more than lenient in his treatment of the deficiencies contained in the Candidate's filings. His summation of the facts and issues are excellent. However, in straining to maintain ballot access (which is usually the preferred route), "substantial compliance," or even a lesser standard, was incorrectly applied to the facts of this political appointment case. Strict scrutiny is certainly the standard when ballot access is in question by a means other than the grassroots petitions of the people. Too much leeway was afforded to two political leaders to nominate a candidate through the political process without following the statutes in question.

At pages 8, 9, and 10 of his Recommendation, the Hearing Officer explains his four findings. First, the "Resolution" (which is the wrong document to begin with) clearly fists the nominating committee as the 26<sup>th</sup> State Central Committee and 26<sup>th</sup> District State Central Committee. The Election Code, at 10/5-7-8(a), clearly provides for a State Central Committee. That is <u>not</u> the "appropriate" committee (as mandated by 5/8-17 and 5/7-61) to nominate a "Fast Pass" candidate for State Senator. The Hearing Officer's presumption that, "...it is <u>apparent</u>...that the political party leaders "intended" to nominate a State Senator", is not in compliance with the statutes recited above. What the two political leaders "intended," has no bearing on the improper Resolution, containing an improper committee, which has no power or

authority to nominate a State Senator pursuant to Article 8. The only thing "apparent" from the document is that an inappropriate committee attempted to nominate a candidate.

The second issue as to a Resolution being used rather than a Notice of Appointment as specified in the statute, is also improper. The Hearing Officer states that the improper Resolution "had the effect" of appointing the Candidate. (Interestingly, the Candidate also agrees the Resolution was improper and not needed since the purported "appointment" was under paragraph 9 of 5/7-61; *See* Motion to Strike). Although unsaid, substantial compliance seemingly is being invoked again, although the 9<sup>th</sup> paragraph of 5/7-61 does not mandate a "Resolution" (first 8 paragraphs of 5/7-61 require a Resolution), but does require a Notice of Appointment. Our Supreme Court has never, to counsel's knowledge, in Election cases, used the "had the effect" standard, in order to find compliance with a mandatory provision of the Code.

As to the date of selection of the Candidate, at page 9 of the Recommendation, the Hearing Officer makes "a logical conclusion" and "a reasonable inference" that the date of the meeting is also the date the nomination occurred. The Hearing Officer is being too generous (and clarifies what language should have been used). The courts have not been that generous since *Zerante*, *supra*.

The Hearing Officer went beyond the certified Certificate, which clearly stated the meeting was held in Palatine, when he used an affidavit from one of the political leaders, who allegedly chaired the appointment meeting. After an attempt to explain and stretch the "Palatine" mistake (which is in the 27<sup>th</sup> District) by listing homes in the unincorporated area of Palatine, as, perhaps the location of the meeting (*See* Motion to Strike), the "Affidavit" then claims the meeting was held at a Mariano's in the 26<sup>th</sup> District. This is an attempt to amend the

nomination papers, and not in compliance with the Election Code or case law. At best, it is the

3<sup>rd</sup> attempt to get it right after the first and second attempts failed.

IV. Conclusion

The Hearing Officer is a longtime respected attorney and colleague. Objector's counsel

greatly respects him and his work through the years. In this case, however, the use of

"substantial compliance," "logical conclusions," and what may – or may not, be "apparent," are

not the correct criteria to be used to gain ballot access for political committee appointees.

This is a strict compliance and strict scrutiny case. There are some laws that just cannot

be stretched to allow a candidate ballot access. The integrity of our electoral process demands

otherwise – especially when political party leaders (in this case, just two) attempt to place a

candidate on the ballot the "Fast Pass" way, and avoid the primary process. As aptly stated by

our Supreme Court in Jackson-Hicks, "there is no close enough" when attempting to comply

with mandatory provisions of the Election Code.

WHEREFORE, the Objector, MICHAEL DANFORTH, respectfully requests that the

Recommendation of the Hearing Officer, as set forth above, not be followed, and the Objections

be sustained.

Respectfully submitted,

MICHAEL DANFORTH, Objector

By: /s/Burton S. Odelson

Burton S. Odelson

Burton S. Odelson Luke J. Keller

ODELSON & STERK, LTD.

3318 West 95th Street

Evergreen Park, IL 60805

(708) 424-5678/(708) 424-5755 -fax

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## Shorten v Coyne 16 SOEB GE 503

Candidate: Melissa Coyne

Office: 32<sup>nd</sup> Senate

Party: Democratic

**Objector:** Michael Shorten

Attorney For Objector: Burton S. Odelson

Attorney For Candidate: Ross D. Secler

Number of Signatures Required: 1000

Number of Signatures Submitted: not disputed

Number of Signatures Objected to: not applicable

**Basis of Objection:** An inappropriate committee (the "32nd Senate District Central Committee") made the purported appointment; the date of any vote on the purported appointment was necessary and not made clear; the circulator's affidavit is defective, and the Candidate's Statement of Candidacy is false (she falsely swore that she is a qualified voter in McHenry County when she is a resident of Lake County).

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss Objector's Petition, or in the alternative, Motion for Summary Judgment; Objector's Reply to Candidate's Motion to Strike and Dismiss

**Binder Cheek Necessary:** No

**Hearing Officer:** Jim Tenuto

Hearing Officer Findings and Recommendation: The Candidate argues primarily that any objection to the "Resolution to Fill Vacancy in Nomination" must fail, because Paragraph 9 of Section 5/7-61 controls, and does not require filing of a Resolution where no candidate was nominated at the General Primary. The Candidate also argues that the Objector is precluded from objecting to the form of the "notice of appointment" because the issue was not raised in the Objection, and, alternatively, that the appropriate legislative committee met and adequately satisfied the "notice of appointment" requirement. Finally, Candidate challenges the Objector's assertion that the date of her appointment was required to be included in any filing.

In his Response to the Motion to Strike and Dismiss, the Objector agrees with Candidate that Paragraph 9 of Section 5/7-61 is controlling, but argues that an inappropriate committee attempted

to make the appointment, because it was the "Legislative Committee" for the appropriate legislative district which was to have made the appointment, the date of any vote on the appointment was not made clear, and, further, that the circulator's affidavit is defective, and the Statement of Candidacy contains a false county of residence.

The Hearing Examiner recommends that the Candidate's Motion to Strike and Dismiss, or in the Alternative, Motion for Summary Judgment, be granted. The appropriate committee to fill a vacancy in nomination when no candidate has been nominated for State Senator at the General Primary Election is the "Legislative Committee" per Section 5/8-5. Rather than "Legislative Committee." the instant "Resolution" states "32<sup>nd</sup> Senate District State Central Committee." Nonetheless, the appropriate persons (Chairs of the Lake County and McHenry County Democratic Party) signed the Resolution, and the Hearing Examiner recommends that failure to insert "Legislative Committee" not be found to invalidate the nomination where there has been substantial compliance.

The Resolution states the "date of meeting" to be April 17, 2016. The Hearing Examiner finds that it is a logical conclusion and reasonable inference that the date of the meeting is also the date upon which the nomination occurred; while it would have been preferable to state the same expressly, the absence of an express date of appointment should not be fatal to the petition.

The Hearing Examiner further recommends that Objector's objection to alleged defects in the circulator's affidavit(s) be denied. The Objector argues that each and every petition sheet is invalid because the circulator's affidavit does not (1) indicate the date on which he/she circulated that sheet, (2) indicate the first and last dates on which the sheet was circulated, or (3) certify that none of the signatures on the sheet were signed more than 90 days preceding the last day for filing the petition. The Petition form recites that "the signatures were signed in my presence, after the appropriate managing committee's selection as the party's nominee..." The Hearing Examiner finds that the earliest a candidate could have been nominated was April 13, 2016, which is 48 days prior to the May 31, 2016 filing deadline, and that there are 75 days between the date of the Primary Election and May 31, 2016; accordingly, it is not possible for the instant petition to have been eirculated more than 90 days prior to May 31, 2016. Further, the form used, Petition Form P-10A, supplied by the State Board of Elections, incorporates the language to which the Objection was filed, and satisfies the requirement of Section 5/8-8.

Finally, the Hearing Examiner finds that although the Statement of Candidacy states that the Candidate is a qualified voter in McHenry County, it is clear from a review of the petitions that she is a registered voter in Lake County.

The Hearing Examiner accordingly recommends that the Candidate's Motion to Strike and Dismiss, or in the Alternative, Motion for Summary Judgment, be granted, and Candidate's name be certified for the ballot as the Democratic Candidate for the office of State Senator for the 32nd Legislative District.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE PETITIONS FOR ELECTION FOR THE OFFICE OF STATE SENATOR, 32° LEGISLATIVE DISTRICT, STATE OF ILLINOIS TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION

MICHAEL SHORTEN,

٧.

Petitioner-Objector

MELISSA COYNE.

ORIGINAL ON FILE AT STATE BD OF ELECTIONS ORIGINAL TEME STAMPED AT 6 716 3:12 ....

Respondent-Candidate

#### **OBJECTOR'S PETITION**

The Objector, Michael Shorten, states that he resides at 455 Mira Screet, Crystal Lake, Illinois, 60012, and that he is a duly qualified and registered legal voter of the 32<sup>nd</sup> Legislative District, State of Illinois, the Legislative District from which the candidate seeks election. Objector states that his interest in filing the following objections is that of a citizen desirous of seeing that the election laws governing the filing of nomination papers, publicons for election, and other required documents, for the office of State Senator, 32<sup>nd</sup> Legislative District, State of Illinois, are properly complied with, and that only qualified candidates appear on the ballot for said office as candidates at the November 8, 2016 General Election ("Election").

Therefore, the Objector makes the following objections to the Colitions and Nomination Papers of Melissa Coyne as a candidate for State Senator, 32<sup>nd</sup> Levislative District, State of Illinois, to be voted upon at the November 8, 2016 Election.

- 1. Pursuant to state law, nomination papers for the nomination and election to the office specified above, must contain the signatures of not fewer than 1,000 duly qualified, registered and legal primary Democratic voters of said District collected in the manner prescribed by law. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain signatures in excess of such voters and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
- 2. The Petitions must also contain the proper Resolution to Fill the Vacancy in the Democratic Party nomination for State Senator in the 32<sup>nd</sup> Legislative District as provided in the Election Code, as well as the proper nominating committee first making the nomination in the proper timeframe, and in compliance with the Election Code.

- 3. The Legislative Committee of the appropriate Legislative District must be properly organized prior to the Committee making a valid appointment to fill a vacancy in nomination.
- 4. The Certificate of Legislative Committee Organization filed May 24, 2016 with the State Board of Elections (Ex. A) is certified by Michael Bissett, Chairman, and Terry Link, Secretary, of the 26<sup>th</sup> Legislative District of the Democratic Party on April 17, 2016. The Certificate clearly specifies that the Legislative Committee of the Democratic Party of the 26<sup>th</sup> Legislative District met on April 17, 2016 and organized by electing the following officers....
- 5. That the Resolution to Fill a Vacancy in Nomination was filed with the Petitions on May 31, 2016 purporting to nominate Melissa Coyne as the candidate of the Democratic Party for State Senator for the 32<sup>nd</sup> Legislative District. (Ex. B)
- 6. The Democratic Party of the 26<sup>th</sup> Legislative District (Ex. A) cannot legally nominate a State Senator candidate to fill a vacancy in the 32<sup>nd</sup> Legislative District. The Resolution to Fill a Vacancy in Nomination is false and not in compliance with the applicable provisions of Article 7 and Article 8 of the Election Code since the 32<sup>nd</sup> Senate District Central Committee was not the proper committee of the Democratic Party to nominate a candidate in the 32<sup>nd</sup> Legislative District, and the appropriate committee was not organized prior to the execution of the purported Resolution to Fill a Vacancy in Nomination that was purportedly signed on April 17, 2016.
- 7. Section 5/7-61 and 5/8-5 set forth the mandatory requirements necessary to fill a vacancy in nomination.
- 8. The "appropriate" committee to fill a vacancy in the Democratic nomination in the 32<sup>nd</sup> Legislative District for the office of State Senator, is the 32<sup>nd</sup> Legislative District Committee of the Democratic Party not the 32<sup>nd</sup> Senate District Central Committee, as represented in the Resolution to Fill a Vacancy ("Resolution"). In fact, it is the Chairman of the County Central Committee of the Counties in the 32<sup>nd</sup> Legislative District that make up the 32<sup>nd</sup> Legislative District Committee. (5/8-5)
- 9. The "Resolution" does not designate or state on what date the appropriate committee voted to nominate Melissa Coyne. Thus, no date as to when the petition process may begin is ascertainable from the Resolution or the petitions with signatures filed with the State Board of Elections.
- 10. Each and every petition sheet is invalid for not stating the candidate's correct <u>legislative</u> district. (In the preamble and in the "Office" box, "32<sup>nd</sup> District" is listed not 32<sup>nd</sup> Legislative District).
- 11. Each and every petition sheet is invalid since the circulator's affidavit does not specify

that the voters signing were "qualified primary voters of the Democratic Party."

- 12. Each and every petition sheet is invalid since the circulator's affidavit does not specify and certify to any of the three options specified in 5/8-5 as to when the petition was circulated.
- 13. The wording, "...after the appropriate managing committee's selection of the candidate as the party's nominee..." is improper, not found in 5/8-5 or 5/7-61, and not the certification as to when the petition was circulated as required by 5/8-5 or any other appropriate section of the Election Code, thus invalidating the circulator's affidavit and each and every petition sheet. (See Ex. C for an example of a legally correct circulator's affidavit).
- 14. That the Statement of Candidacy is false and void and not in compliance with the Election Code since the candidate has falsely sworn that she is a "qualified voter in McHenry County" at 54 S. Hickory Avenue in Fox Lake, Illinois, when she is a resident of Lake County.
- 15. The Certificate of Legislative Committee Organization, the Resolution to Fill a Vacancy in Nomination, the Statement of Candidacy, and each and every petition sheet are not in compliance with the mandatory requirements of the Election Code as set forth above. Any of the above specified defects invalidates the Petitions and is grounds to invalidate and hold for naught, the candidacy of Melissa Coyne.

WHEREFORE, Objector prays that the nomination papers of Melissa Coyne as a candidate for State Senator, 32<sup>nd</sup> Legislative District, State of Illinois, to be voted upon at the November 8, 2016 Election be declared to be insufficient and not in compliance with the laws of the State of Illinois, and that her petition papers and name be stricken, and that this Board enter its decision declaring that the name of Melissa Coyne as a candidate for State Senator, 32<sup>nd</sup> Legislative District, State of Illinois, not be printed upon the official ballot for the Election to be conducted November 8, 2016.

Michel Shule

Burton S. Odelson ODELSON & STERK, LTD. 3318 W. 95<sup>th</sup> Street Evergreen Park, IL 60805 (708) 424-5678 (708) 424-5755 – fax attyburt@aol.com

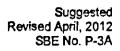
# **VERIFICATION**

State of Illinois )					
State of Illinois ) ss. County of <u>Yane</u> )					
The undersigned, being first duly sworn, deposes and states that he is the Objector in the above Verified Objector's Petition, that he has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.					
Michel Stocker OBJECTOR					
OBJĚCTOR					
Subscribed and sworn to before me, a Notary Public, by Michael Shorten,					
on June 7, 2016.					
$\mathcal{M}$ ). We shall					
EILEEN M MINAHAN OFFICIAL SEAL Notary Public, State of Illinois My Commission Expires January 27, 2018  My M.					

# CERTIFICATE OF LEGISLATIVE OR REPRESENTATIVE COMMITTEE CRGANIZATION

:	LEGISLATIVE DISTRICT )  OR ) fill in only ONE blank  REPRESENTATIVE DISTRICT )	;
	STATE OF ILLINOIS COUNTY OF LAKE (County in which organization occurred)	
	This is to certify that, in accordance with 10 ILCS 5/8-5, the Legislative or Representative	
(	Committee (circle one) of the <u>Democratic</u> Party of the <u>26th</u> (Legislative or	
	Representative District (circle one) met on April 17, 2016, in the City of	
_	Volo, County of Like and organized by electing	
t	he following officers In conformity with the Election Laws of this State.	
:03	Michael Bissett PRINT CHAIRMAN'S NAME	
_ 	971 Brittany Bend, Lake in the Hills, 1L 60156 COMPLETE MAILING ADDRESS	
ID FIAT CU	PRINT SECRETARY'S NAME	
_	1280 STREAMUDOODLD, VERROD HILLS 60061 COMPLETE MAILING ADDRESS	
	SIGNED: CHAIRMAN	

EXHIBIT A



# RESOLUTION TO FILL A VACANCY IN NOMINATION

(Failure to nominate candidate at primary election)

WHEREAS, a vacancy in the nomination of the	<sub>те</sub> Democratic	Party for th	ne Office of State Senator
			ue to the failure to nominate a candidate
for the Office of State Senator	in and for the	32nd	District (if applicable) of Illinois at the
for the Office of State Senator orlmany election conducted on March 15	5, 2016 (date of elec	ation);	District (ii applicable) or filliois at the
WHEREAS, the 32nd Senate District Cen  32nd District (if applicable) of Illinois haid vacancy as required by 10 ILCS 5/7-61		Democ	Party in and for the Democratic Party to fill
BE IT RESOLVED, that the 32nd Senate Di B2nd District (if applicable) of illinois			
Melissa Coyne			
(Name of Ca	andidate)		
If required pursuant to 10 ILCS 5/7-10.2	or 8-8.1, complete the foilo	wing (this Infor	mation will appear on the ballot)
formerty known as(List all names during	until name	changed on _	(List date of each name change)
54 S. Hickory Avenue	Fox Lake		Illinois 60020 for the office of
54 S. Hickory Avenue (Address)	(City, Viliage	, Town)	(Zip Code)
tate Senator i	n and for the 32nd	_ District (if ap	pplicable) of Illinois to be voted upon at
e General or Consolidated Election to be he			
(CHAIRMAN)  2nd Senate District Democratic Central  Committee		32nd Sens	SOFYARY E
the 32nd District (if applicable)		of the 32	2nd District (if applicable)
gned and swom to (or affirmed) by $\underline{TERR}$	HACL BISSETT U LINK ne of Chairman & Secret	be	Fore me, on April 17, 2016 (Insert month, day, year)
ATKLE COLET		Kattle	un Bugan Sumult

# **PETITION**

We, the undereigned, members of and affiliated with the DEMOCRATIC PARTY and qualified primary electors of the DEMOCRATIC PARTY, in the 28<sup>th</sup> Legislative District of the State of Binois, do hereby petition that the following named person, who has been designated by the 28<sup>th</sup> Legislative District Committee to 18 the vacancy in nomination, shall be nominated as the candidate of the DEMOCRATIC PARTY for election to the office hereinafter specified, to be voted for at the General Election to be held on the 8<sup>th</sup> DAY of NOVEMBER, 2016.

NAME	ADDRESS	OFFICE	DISTRICT	PARTY
Kelly Mazeski	254 W. County Line Road, Barrington, IL 60010	STATE SENATOR	26 <sup>rs</sup> LEGISLATIVE DISTRICT STATE OF ILLINOIS	DEMOCRATIC

				<b>!</b>		
NAME (SIGNATURE)	NAME (PRINTED)	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	COUNTY	STATE	
1 thilly Nar	HailwWallin	260 W Lakest	Barrington	COOK	ILLINOIS	
2	Jeft Paran	277 4 46 St	Barrington	Ceck	ILLINOIS	
327	Joseph Swift,	213W. Cake St.	Bernelon	Cook	ILLINOIS	
Somith	Patricia Smith	213 WLake ST	Barriston	Cook	ILLINOIS	
5 Matten wa	Mother Warm	135 W Lake St	Barrenton	look	ILLINCIS	
6 yru Coly	Kim Gra	135 whatest	Bernoth	Cook	ILLINGIS	
1/h) (-)	John Rosene	WY-A Brackura		Meltenry	ILLINOIS	
Serverge Decell	Jennifer Drecoll	246 Steeplechase Rd	Barneton Hells	ide	imwcia	
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10 Der Home	Debra Had	1245 Get When	1 A J . 1	Me Honry	KNOW	
STATE OF ILLINOIS,  COUNTY OF MCHENTY )88						
in the Cathanara Name of Cathanara Name (City, Town or Village)  [Print Name of Cathanara Village)  [Print Name of Cathanara Village)  [Print Name of Cathanara Village)						
and State of illinois, that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed between 5/4 and						
District of the State of Illinois, and qualified primary voters for which the nomination is sought, and that their respective residences are correctly stated, as above set forth.  **Elly Mauski**						
Subcortined and sworm to before me, by						
this						

EXHIBI

SHEET NO.

# BEFORE THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED ELECTORAL BOARD

MICHAEL SHORTEN	)	
Petitioner-Objector,	)	
retitioner objector,	)	
v.	) No. 201	6-SOEB-GE-503
	)	
MELISSA COYNE,	)	
<b>D</b>	)	
Respondent-Candidate.	)	
	)	

# CANDIATE'S MOTION TO STRIKE & DISMISS OBJECTOR'S PETITION OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

NOW COMES, Respondent-Candidate, MELISSA COYNE, (the "Candidate") by and through her attorney, ROSS D. SECLER, and hereby moves for the entry of an order striking and dismissing the Objector's Petition, filed by Petitioner-Objector, MICHAEL SHORTEN (the "Objector"). In support thereof, Candidate states as follows:

#### INTRODUCTION & PROCEDURAL BACKGROUND

- 1. No candidate's name appeared for the Democratic Party for the office of State Senator in the 32<sup>nd</sup> Legislative District, State of Illinois at the General Primary Election held March 15, 2016, nor was a candidate nominated for said office by virtue of running as a write-in candidate, which left a vacancy in nomination. The Legislative Committee of the Democratic Party for the 32<sup>nd</sup> Legislative District, in accordance with the provisions of the Election Code of Illinois (10 ILCS 5/1-1, et seq.), appointed Candidate to be the candidate of the Democratic Party for the office of State Senator in the 32<sup>nd</sup> Legislative District in the State of Illinois, to be voted upon at the General Election to be held on November 8, 2016.
- 2. On May 31, 2016 Candidate filed her petitions and nomination papers in order to appear as a candidate for the Democratic Party for the office of State Senator in the 32<sup>rd</sup> Legislative District, State of Illinois at the General Election to be held on November 8, 2016.

- 3. Objector filed his "Objector's Petition" on June 7, 2016 in which he challenges Candidate's appointment and alleges defects to her petition sheets. Objector raises the following "grounds" that allegedly disqualify Candidate and deny her right to access the ballot:
  - a. That the "Resolution to Fill a Vacancy in Nomination" does not represent that the correct, "appropriate" legislative committee to fill the vacancy in nomination:
  - b. That the "Resolution" does not state the date on which the appropriate legislative committee met and voted to nominate Candidate;
  - c. That the petition sheets do not state the correct district;
  - d. That the circulator's affidavit on each petition sheet does not state that the signers were "qualified *primary* voter of the Democratic Party" (emphasis in original);
  - e. That the circulator's affidavit on each petition sheets do not contain language regarding the date of circulation found in §8-5 or §7-61 of the Election Code; and
  - f. That the Statement of Candidacy is "false and void" because of how Candidate's address was provided.

See generally Objector's Petition,  $\P\P$  8, 9, 10, 11, 12, 13, 14

- 4. Objector's allegations reflect a fundamental misunderstanding or misreading of the Election Code and controlling case law and each of Objector's allegations will be discussed in turn.
- 5. Ultimately, Objector has failed to even state a valid, applicable objection and Objector's Petition should be stricken in its entirety. Alternatively, based on the objections contained in the Objector's Petition, there is no genuine issue of material fact that would entitle Objector to the relief he seeks and thus the objections should be overruled as a matter of law.

#### **ARGUMENT**

- 6. Objector has failed to meet the minimum pleading requirements governing objections to nominating petitions and thus cannot be granted the relief he seeks.
- 7. Section 10-8 of the Illinois Election Code (10 ILCS 5/10-8) sets for the standard for legal sufficiency of an objection to nominating petitions and requires that, "[the objector's petition . . . shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question . . . ." 10 ILCS 5/10-8; Sec also 10 ILCS 5/7-61, 10 ILCS 5/8-17 (directing electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nomination petitions also shall hear and pass upon objections to nomination petitions filed by candidates in cases like the case at bar).
- 8. Fulfillment of each of the requirements in §10-8 is mandatory. See Pochie v. Cook County Officers Electoral Bd., 289 Ill. App. 3d 585 (1st Dist. 1997). Objector's failure to state a valid objection upon which relief can be granted by this honorable electoral board warrants dismissal of the Objector's Petition outright.
- 9. Electoral boards have stated that, in order to fully state the nature of an objection, at least some credible evidence is required, sufficient to sustain a minimal burden of proof. See In re Objection of Smith, p. 2 (Sangamon Cty. Electoral Board 2004) ("The objector's failure to fully state the nature of his objections denies the respondent his ability to defend his petitions. Due process of law mandates an individual be adequately apprised of the complaint against him so as to be able to defend himself."): Blakemore v. Shore, 11-COEB-MWRD-03 (Cook Cty. Electoral Board 2012) ("[failure to] describe a potential defect that may or may not reside somewhere in the petition" by "provid[ing] specifics" is a "fatal pleading defect").

- 10. In this case, Objector has failed this minimum burden. If all of the facts (not including legal conclusions) alleged by Objector were true, Objector would still not be able to prove the validity of his objections.
- 11. As a preliminary matter, paragraph 6 of the Objector's Petition is rambling, nonsensical and full of conclusory statements and, as such, paragraph 6 should be stricken in its entirety as a matter of law. Alternatively, and without waiving Candidate's objection to paragraph 6 of the Objector's Petition, any discernable allegations of fact or any proper objections to Candidate's nomination raised in Objector's Petition, paragraph 6 are discussed below.
- 12. For the reasons set forth herein, the Objector's Petition in insufficient in law and fact in that it does not state any legally sustainable claims and, as such, each allegation should be stricken, requiring dismissal of the entire Objector's Petition. However, as a preliminary matter, it is first necessary to distinguish the applicable statutory requirements in this case versus those relied upon by Objector.
  - I. Objections to the "Resolution to Fill a Vacancy in Nomination" Must Fail Because Paragraph 9 of Section 5/7-61 of the Election Code Controls in this Case and Objector Has Failed to State a Valid Objection Thereto
- 13. The Objector's Petition fails to state an actionable objection because it, seemingly, relies on the incorrect statutory authority upon which its objections are based. There is no requirement that Candidate in this case file a Resolution to Fill a Vacancy in Nomination and, thus, any objection concerning the form and requirements of a Resolution to Fill a Vacancy in Nomination is null.
- 14. As stated above, no candidate's name was printed on the March 15, 2016 General Primary Election ballot for the Democratic Party for nomination to the office of State

Senator for the 32<sup>nd</sup> Legislative District, State of Illinois. Nor did any write-in candidate obtain nomination by primary voters.

15. Section 8-17 of the Election Code requires that:

"if there was no candidate for the nomination of the party in the primary, no candidate of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 75 days after the date of the general primary election. Vacancies in nomination occurring under this Article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this Code."

#### 10 ILCS 5/8-17.

- 16. Section 7-61 of the Election Code (10 ILCS 5/7-61) provides two distinct methods of filling vacancies in nomination for two different kinds of scenarios: (i) when a vacancy is created by virtue of there being a lack of candidate appearing on the primary ballot, versus (ii) when a vacancy in nomination is created by other reasons like, for example, the death or disability of a candidate whose name *did* appear on the primary election ballot.
- 17. As detailed by the Illinois Supreme Court in Wisnasky-Bettorf v. Pierce, §7-61, paragraph 9 of the Election Code applies to situations where there was no original candidate on the ballot while paragraphs 3 through 8 of §7-61 do not. Pierce, 2012 IL 11253 at ¶21, 23.
- 18. The court in *Pierce* specifically concludes that paragraph 9, § 7-61 of the Election Code does not require the filing of a Resolution to Fill the Vacancy in situations where no candidate was nominated at the primary election as is the situation in the case at bar. *Id*.
- 19. According to the court in *Pierce*, under paragraph 9 of § 7-61 (read here in conjunction with §8-17), there are four general requirements for filling a vacancy in nomination under the circumstances like the case at bar:

- a. The appropriate legislative committee nominates a person within 75 days after the date of the general primary election;
- b. The designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office (with the circulation period beginning on the day the appropriate committee designates the person);
- c. The designated person timely files, together, the following required documents:
  - i. His or her nominating petitions,
  - ii. Statement of candidacy,
  - iii. Notice of appointment by the appropriate committee, and
  - iv. Receipt for filing his or her statement of economic interests; and
- d. The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9].

Pierce, 2012 IL 111253 at ¶21; 10 ILCS 5/7-61; 10 ILCS 5/8-17.

- 20. In this case, Candidate has satisfied all of the requirements of §7-61, paragraph 9 of the Election Code and Objector has failed to plead anything that *could* suggest otherwise. To the extent that Objector has even stated a valid objection, Candidate is still entitled to judgment in her favor as a matter of law and all objections to her candidacy should be overruled. Each of Objector's allegations are discussed in turn as follows.
  - a. Objections Alleging General Deficiencies in a "Resolution to Fill a Vacancy in Nomination" Have No Legal Basis in this Case
- 21. In part, Objector claims that Candidate should be denied access to the ballot due to certain, alleged deficiencies in Candidate's "Resolution to Fill a Vacancy in Nomination." See Objector's Petition, ¶¶6, 8, 9. There is no requirement that Candidate submit a Resolution to Fill a Vacancy in Nomination in this case and therefore all objections regarding said "Resolution" must fail.

<sup>&</sup>lt;sup>1</sup> The specific deficiency of the objections related to the Certificate of Legislative Committee Organization and those to Candidate's petition sheets and Statement of Candidacy are discussed *infra*.

- Objector claims that Candidate's nominating petitions, "must also contain the proper Resolution to Fill the Vacancy in the Democratic Party nomination for State Senator in the 32<sup>nd</sup> Legislative District . . .." Objector's Petition, ¶2. There is no attempt to distinguish or provide the specific, applicable statutory violation complained of in this case. It is clear on the face of the entire Objector's Petition that Objector is referencing a "Resolution to Fill a Vacancy in Nomination" as described in paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code.
- 23. Objector's statement of law and basis for the subsequent objections is, simply, wrong. Objector's failure to recognize and distinguish the different requirements with respect to the different mandatory filings applicable to different types of vacancies in nomination is fatal to his objection.
- 24. The holding of *Pierce* is clear: the statutory requirement(s) relating to a candidate being required to file a "resolution to fill a vacancy in nomination" (as detailed in paragraph 3, 4, 5, and 6 of §7-61 of the Election Code) do not apply to cases in which no candidate's name appeared on the primary ballot and where no write-in candidate was nominated by primary voters. *Pierce*, 2012 IL 111253 at ¶¶18, 21, 23.
- 25. Paragraphs 5, 6, 8, 9 of Objector's Petition mention and/or allege some purported defect in the Resolution to Fill a Vacancy in Nomination. Not one of the defects complained of is legally recognizable and thus must be dismissed as a matter of law.
- 26. Candidate was under no obligation to file a Resolution to Fill a Vacancy in Nomination that complies with paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code. Paragraphs 3, 4, 5, and 6 of §7-61 do not apply to Candidate in this case. Instead, in order for Candidate to access the ballot, she was required to comply with paragraph 9 of §7-61, which is devoid of any language regarding a "Resolution" and, therefore, based on Objector's Petition, no mandatory requirements *could* have been violated to jeopardize her candidacy.

- 27. Not a single objection contained in Objector's Petition assert an objection relevant to the language and requirements of §7-61, paragraph 9 of the Election Code.
- 28. Thus, any arguments Objector *could* bring fail because the Objector's Petition is deficient on its face.
- 29. Specifically, Objector takes issue with the substance of the document attached as "Exhibit B" to the Objector's Petition.
- 30. Exhibit B" of Objector's Petition is titled "RESOLUTION TO FILL A VACANCY IN NOMINATION (Failure to nominate candidate at primary election)." See Objector's Petition, Exhibit B.
- 31. No matter the substantive objections brought against the "Resolution" or the "Resolution to Fill a Vacancy in Nomination," (see Objector's Petition, ¶¶5, 6, 8, 9, and 14), the objections made, as alleged in Objector's Petition, are against a document that was not mandatory. As stated above, Candidate had zero obligation to file a Resolution to Fill a Vacancy in Nomination and thus, any objection to her "Resolution" is meritless.
- 32. Notably, Objector has not raised an objection to Candidate's "notice of appointment by the appropriate committee," nor has Objector asserted that Candidate failed to properly file a "notice of appointment by the appropriate committee" as required by paragraph 9 of §7-61 of the Election Code. At no point does Objector raise any objection or cite any legal authority related to the requirements of a "notice of appointment" or any other documents required by paragraph 9 of §7-61 of the Election Code.
- 33. Objector has simply failed to state an objection regarding something Candidate was required to file.
- 34. As stated above, §10-8 of the Election Code requires that objections be specific and "state fully the nature of the objection . . . ." 10 ILCS 5/10-8.

- Objector is bound by the allegations contained in the Objector's Petition. Sce Delay v. Bd. of Election Com'rs of City of Chicago, 312 Ill. App. 3d 206, 209-10 (1st Dist. 2000) (holding that where, "the Board invalidated the plaintiff's nomination papers on a ground never raised in the objection, and in so doing, exceeded its statutory authority"). Objector is not permitted to amend his Objector's Petition beyond the ground stated in the original filing. Reyes v. Bloomingdale Tup. Electoral Bd., 265 Ill. App. 3d 69, 72 (2d Dist. 1994), opinion vacated in part, 265 Ill. App. 3d 69, (2d Dist. 1994).
- 36. Therefore, because Candidate had no obligation to submit a Resolution to Fill a Vacancy in Nomination (as described in paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code) and because Objector has failed to raise a specific objection regarding any of the requirements in paragraph 9 of §7-61 of the Election Code, all objections regarding the "Resolution," "Resolution to Fill a Vacancy in Nomination," or "Exhibit B" should be stricken as a matter of law.
  - b. Alternatively, Paragraphs 6, 8, and 9 of Objector's Petition Should Still Be Overruled in their Entirety
- 37. In the alternative, even if Objector has sufficiently pled objections against the "Resolution," Objector is not able to prevail on the substance of said objections.
- 38. The objections raised in paragraphs 6, 8 and 9 of the Objector's Petition allege that due to purported defect(s) in what is written on certain form(s) submitted with Candidate's nominating petitions.
- 39. For the reasons stated herein (and above), Objector's legally baseless attempts to impose additional requirements on Candidate in order for her to access the ballot must fail and the objections should be dismissed or overruled.
  - i. The Objection that the "Resolution" does not represent the correct, appropriate Legislative committee is unfounded

- 40. There is nothing in the Objector's Petition to indicate Candidate did not comply with the requirements of paragraph 9, §7-61 of the Election Code (read in conjunction with §8-17).
- 41. Instead, paragraphs 6 and 8 of the Objector's Petition take issue that the "Resolution to Fill a Vacancy" has printed on it, "32<sup>nd</sup> Senate Central Committee of the Democratic Party" (see Objector's Petition, Exhibit B; C.f. Objector's Petition, ¶6, 8), instead of "the 32<sup>nd</sup> District Legislative Committee for the Democratic Party." See Objector's Petition. ¶8.
- 42. As discussed above, there is no basis in law (nor alleged in the Objector's Petition) that would impose the requirements of paragraphs 3, 4, 5, and 6 of §7-61 of the Election Code on Candidate in this case.
- 43. Paragraph 9 of §7-61 only requires the filing of a "notice of appointment by the appropriate committee" without providing any further specification. That a document filed with Candidate's nominating petitions is labeled "Resolution to Fill a Vacancy in Nomination" does not somehow create increased legal burdens for Candidate.
- 44. Even if the "Resolution" filed with Candidate's nominating papers is deemed a "notice of appointment by the appropriate committee," there are no specific statutory requirements provided for what form the notice of appointment must be in or what information must be included on the notice's face, which renders the objectors thereto null.
- 45. Moreover, given the likely purpose of said "notice of appointment by the appropriate committee" to confirm that the individual filing nominating petitions was duly nominated by the appropriate legislative committee, it is clear from the face of the document (in conjunction with Candidate's petition sheets and Statement of Candidacy) that the appropriate Legislative Committee met and duly nominated Candidate to fill the vacancy. See Madden v. Schumann, 105 lll. App. 3d 900, 902 (1st Dist. 1982) ("a nominating petition

may be read as one complete document in order to achieve substantial compliance with the statute"); Samuelson v. Cook County Officers Electoral Bd., 2012 IL App (1st) 120581, § 36.

- 46. Paragraph 8 of the Objector's Petition asserts that, "[i]n fact, it is the Chairman of the County Central Committee of the Counties in the 32<sup>nd</sup> Legislative District that make up the 32<sup>nd</sup> Legislative District Committee." Objector's Petition, ¶8 (emphasis in original). Thus, to Objector's own point, the term "central committee" could be used to describe the makeup of a legislative committee for purposes of voting to fill vacancies in nomination.
- 47. Objector has failed to raise one basis or plead one fact that somehow established a strict compliance requirement for the exact semantics regarding the name of a committee. Instead, the Election Code requires that the proper committee actually be the committee making the nomination. Objector has not stated that, somehow, the makeup of the legislative committee in this case was invalid based on the face of the "Resolution."
- 48. The proper Chairman and Secretary of the Legislative Committee of the Democratic Party of the 32<sup>nd</sup> Legislative District signed and swore to the "Resolution." See Objector's Petition, Exhibit B.
- 49. It is clear on the face of the "Resolution" that the referenced Committee of the Democratic Party is the Legislative Committee for the 32<sup>nd</sup> Legislative District, State of Illinois.
- 50. That there may be a minor or technical error on a document that may be considered the "notice of appointment" (the contents or details of which are not defined by statute) cannot stand as a basis for invalidated a candidacy. See Samuelson v. Cook County Officers Electoral Bd., 2012 IL App (1st) 120581, ¶ 36 citing Siegel v. Lake County Officers Electoral Bd., 385 Ill. App. 3d 452, 460-61 (2d Dist. 2008) ("When a deviation from the Code is minor or technical in nature, and does not defeat the thrust, purpose, and effect of the statute, or 'affect the legislative intent to guarantee a fair and honest election,' it will not

render that petition invalid"). Such a minor, technical error has no effect on the integrity of the electoral process, does not affect the showing of "grass-roots" support Candidate demonstrated with submission of nominating petitions, and should have no effect on the overall validity of Candidate's nomination.

- 51. Therefore, even if Objector's claims can survive the fact that no objection was made regarding a mandatory filing or requirement in this case, the objection that the "Resolution to Fill a Vacancy in Nomination" does not indicate the "appropriate committee" is erroneous and should be overruled.
  - ii. Paragraph 9 of Objector's Petition has been brought in bad faith and the entire Objector's Petition should be dismissed pursuant to Daniel v. Daly
- 52. Additionally, Paragraph 9 of Objector's Petition should be stricken or overruled outright. Said paragraph claims, "The 'Resolution' does not state on what date the appropriate committee voted to nominate" Candidate. *Objector's Petition*, ¶9.
- 53. Even the most cursory review of the "Resolution" shows the "Date of meeting" is clearly provided, which is the same day indicated that the "Resolution" was signed and sworn to. The "Resolution" also clearly states that the committee "voted to nominate a candidate . . ." and that it "hereby nominates, designates, and appoints . . .." Objector's Petition, Exhibit B.
- 54. The allegations stating otherwise, as contained in Objector's Petition, are absurd and could not have been brought in good faith.
- 55. Objector attached the "Resolution" to his Objector's Petition as Exhibit B. It is as if Objector did not read the objection or conduct even a superficial review of the allegations contained therein before signing and swearing a verification to the contrary. See Objector's Petition, Page 5.

- 56. Pursuant to the principles of *Daniel v. Daly*, 2015 IL App (1<sup>st</sup>) 150544, the clear had faith on Objector's part warrants dismissal of Objector's Petition, paragraph 9. *Sce Daniel*, 2015 IL App (1<sup>st</sup>) 150544 at ¶26, 32-33. Further, because Objector has sworn a false oath, the entire Objector's Petition should be dismissed or, alternatively, this Honorable Board should issue an order compelling Objector's appearance in order to determine "whether the [O]bjector had 'knowledge, information and/or belief formed after reasonable inquiry'." *Daniel*, 2015 IL App (1<sup>st</sup>) 150544 at ¶33.
- 57. Regardless, Objector has failed to allege upon what basis he purports that Candidate, in this case, was required to include the date of her appointment in any filing given that paragraph 4 of §7-61 of the Election Code does not apply here.
- 58. Hence, paragraph 9 of the Objector's Petition should be stricken or. alternatively, overruled outright, along with the entire Objector's Petition.

## II. The Objections to Candidate's Nominating Petitions and Statement of Candidacy Are Baseless and Legally Deficient

- 59. The statements and allegations contained in paragraphs 10 through 14 of the Objector's Petition does not contain one specific allegation that even remotely resembles a violation of the Election Code.
- 60. Objector's Petition, paragraph 10 alleges that Candidate's nominating petitions are invalid because they do not state the Candidate's correct legislative district. This issue is similar to the one in the case, Nolan v. Cook County Officers Electoral Bd., where a candidate's petitions were valid because they contained some reference to the correct district. Nolan, 329 Itl. App. 3d 52, 58 (1st Dist. 2002) ("where, as here, the prefatory language of a candidate's signature sheets sufficiently represents that all of the signers satisfy a particular certification requirement, it neither serves a useful purpose nor aids in preserving the integrity of the electoral process [citation omitted] to exclude the candidate from

participation for failure to demonstrate strict compliance with the relevant statutory provision"). The same reasoning applies with equal force here as Candidate's petitions sufficiently represent that the signers are voters from the 32<sup>nd</sup> Legislative District, State of Illinois and thus, paragraph 10 should be stricken.

- 61. Objector's Petition, paragraph 11 should be stricken for failure to state a valid objection. As has been found hy other electoral hoard (and affirmed hy the circuit court), the term "qualified voter of the Democratic Party" and "qualified primary voter of the Democratic Party" have the same meaning. See Murphy v. Hurst, 88-EB-SMAY-1, (Chicago Electoral Board, January 19, 1989); Slywczuk v. Bank, (Chicago Electoral Board, January 27, 2004), affirmed, Slywczuk v. Bd. of Election Com'rs for the City of Chicago, 04 COEL 0006 (Cir. Ct. Cook Co. 2004); See also 10 ILCS 5/3-1.2 (providing the definition of eligibility to sign a petition); Nolan, 329 Ill. App. 3d at 54 (holding that a candidate's nominating petitions were valid where the petitions contained a statement from the circulator that all of the voters signing the petitions were "qualified voters").
- 62. Objector's Petition, paragraph 12 should be stricken because it is nonsensical. "5/8-5" (assumed to mean Section 8-5 of the Election Code) does not contain any "option" regarding when petitions are circulated. Candidate has no way of knowing what "three options" Objector is referring to in "5/8-5" and therefore paragraph 12 of the Objector's Petition should be stricken for failure to fully state the nature of an objection.
- 63. Objector's Petition, paragraph 13 should be stricken because it too fails to state a valid objection. Pursuant to paragraph 9 of §7-61 of the Election Code, the "circulation period for those petitions" of a candidate nominated by the appropriate managing committee where no candidate was nominated in the primary election, "begins on the day the appropriate committee designates that person," See 10 ILCS 5/7-61. The assertion that "the wording" found in Candidate's petition sheet circulator affidavits is "not found in 5/8-5 or 5/7-

61" (Objector's Petition, ¶13) is absurd. Again, there is nothing about circulating nominating petitions in Section 8-5 of the Election Code.

- Objector's Petition, paragraph 14 should be stricken for failure to state a valid objection. Candidate substantially complied with the requirements of Section 7-10 of the Election Code in filling out her Statement of Candidacy. That a minor, technical, scrivener's error exists does nothing to the integrity of her oath or the validity of the underlying documents. There is no confusion that Candidate is a registered voter at the street address provided in the Village of Fox Lake, State of Illinois. There is no confusion as to whether Candidate is a duly registered, qualified voter of the 32<sup>nd</sup> Legislative District, State of Illinois. Candidate's address is correctly provided on each of the petition sheets as well as on the "Resolution to Fill a Vacancy in Nomination." There is no inconsistency, conflict, or issue that warrants invalidating a candidacy based upon the allegations in paragraph 14 of Objector's Petition.
- 65. Paragraphs 10 through 14 of Objector's Petition are legally baseless, "shotgun" attempts to intimidate Candidate and force her and the taxpayers of the State of Illinois to waste resources in even entertaining these absurd allegations. Enough time, energy, and money has already been wasted. Objector's Petition should simply be dismissed and this matter should be concluded.

### CONCLUSION

66. Illinois courts strongly favor ballot access for candidates who wish to run for public office. See McGuire v. Nogaj, 146 Ill. App. 3d 280, 285 (1986): Welch v. Johnson, 147 Ill. 2d 40 (1992). Candidate was duly nominated by the appropriate legislative committee and has subsequently complied with the requirements to fill a vacancy in nomination in accordance with the applicable provisions of the Election Code and controlling case law. Objector has not raised a single issue that could call into question the validity of Candidate's

candidacy and, thus, the Objector's Petition should be stricken and dismissed and any objections to Candidate's nomination should be overruled.

# WHEREFORE, the Candidate, MELISSA COYNE, prays:

- a. this Honorable Electoral Board GRANT the Candidate's Motion to Strike and Dismiss Objector's Petition or, alternatively, GRANT Candidate's Motion for Summary Judgment;
- b. this Honorable Electoral Board enter an order dismissing the Objector's Petition;
- c. this Honorable Electoral Board enter its decision declaring that the name of MELISSA COYNE as a candidate for the to the office of State Senator of the 32<sup>nd</sup> Legislative District, State of Illinois APPEAR on the OFFICIAL BALLOT of the General Primary Election to be held on November 8, 2016;
- d. that this Honorable Electoral Board award reasonable attorney fees and costs necessary to defend in this action;
- e. for such other and further relief as the Electoral Board may consider proper and just.

Respectfully Submitted,

/s/ Ross D. Secler
One of the Attorneys for
Candidate-Respondent

Ross D. Secler, Esq. Ross D. Secler & Associates 30 North LaSalle Street, Suite 3250 Chicago, Illinois 60602 Telephone: (312) 853-8000 Facsimile: (312) 853-8008

rsecler@chicagoelectionlaw.com

# **NOTICE OF FILING & CERTIFICATE OF SERVICE**

The undersigned, an Illinois licensed attorney, hereby certifies that on June 15, 2016, he caused this CANDIDATE'S MOTION TO STRIKE & DISMISS OBJECTOR'S PETITION OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, to be filed with the State Officer's Electoral Board by sending same to the e-mail address of the General Counsel of the State Board of Elections and Hearing Officer Tenuto, in accordance with the Rules of Procedure adopted in this proceeding, and that a true and accurate copy of same was duly served upon the Objector's counsel of record by including the e-mail address(es) on the appearance form(s) as a recipient of the e-mail transmission with which this document was filed

By:	/s/ Ross D. Secler	
	Ross D. Secler	_

Ross D. Secler ROSS D. SECLER & ASSOCIATES 30 North LaSalle Street, Suite 3250 Chicago, Illinois 60602 Telephone: (312) 853-8000 Facsimile: (312) 853-8008

rsecler@chicagoelectionlaw.com

BEFORE THE DULY CONSTITUTED E	LECTORAL BOARD FOR THE HEARING	LAND
PASSING UPON OF OBJECTIONS TO	THE PETITIONS FOR ELECTION FOR T	THE
OFFICE OF STATE SENATOR, 32nd LE	EGISLATIVE DISTRICT, STATE OF ILLH	SOIS
TO BE VOTED UPON AT THE NO	VEMBER 8, 2016 GENERAL ELECTION	312
MICHAEL SHORTEN,	)	1.7
Petitioner-Objector,	)	-
v.	) No. 16 SOEB GE 503	13 - <del>F</del>
MELISSA COYNE,	)	20
Respondent-Candidate.	)	

# RESPONSE TO MOTION TO STRIKE AND DISMISS

NOW COMES the Objector, MICHAEL SHORTEN, by and through his attorneys. ODELSON & STERK, LTD., and in Response to Candidate's Motion to Strike and Dismiss states as follows:

## Introduction

Initially, the attorney for the Objector requests the Hearing Officer and Board to recognize the unprofessional attacks, accusations, disrespectful (to the profession, as well as the Election Bar) recitations by the attorney for the Candidate.

Counsel for the Objector, a member of the Election Bar for 44 years, notes the chastising by the 3-year veteran lawyer for the Candidate, of counsel for the Objector's "fundamental misunderstanding or misreading of the Election Code and controlling case law." (Paragraph 4 of the Motion to Strike and Dismiss).

The following are examples of rhetoric not appropriate in <u>any</u> pleading, and which add nothing to the merits – or authority of the case:

• Paragraph 4 of the Motion to Strike and Dismiss:

"Objectors allegations reflect a fundamental misunderstanding or misreading of the Election Code and controlling case law..."

• Paragraph II of the Motion to Strike and Dismiss:

"Objectors petition is <u>rambling</u>, <u>nonsensical</u>, and full of conclusory statements..."

Paragraph 39 of the Motion to Strike and Dismiss;

"...Objectors legally baseless attempts to impose additional requirements on Candidate ..."

• Paragraph 53 of the Motion to Strike and Dismiss:

"Even the most cursory review. . ."

• Paragraph 54 of the Motion to Strike and Dismiss:

"The allegations . . . are <u>absurd</u> and <u>could not have been brought in good</u> faith . . . "

Paragraph 55 of the Motion to Strike and Dismiss:

"It is as if objector did not read the objection or conduct even a superficial review of the allegations contained therein before signing and swearing a verification to the contrary."

Paragraph 62 of the Motion to Strike and Dismiss:

"Objectors Petition . . . is nonsensical."

• Paragraph 63 of the Motion to Strike and Dismiss:

"The assertion that "the wording" found in candidates petition sheet circulator affidavits is "not found in 5/8-5 or 5/7-61 is absurd."

Paragraph 65 of the Motion to Strike and Dismiss:

"...attempts to <u>intimidate Candidate</u> and force her and the taxpayers of the State of Illinois to waste resources in entertaining these absurd allegations. Enough time, energy, and money has already been wasted." These inflammatory, discourteous, and unprofessional insults are warned against by the Illinois Supreme Court and other regulatory agencies. Counsel for the Objector notes the unwarranted attempts to discredit the attorney for the Objector in an attempt to discredit the objections.

The following will be a simple response to clear, concise, and straightforward objections.

# II. The Appropriate Democratic Committee to Fill a Legislative Vacancy

As recognized by the Candidate in the Motion to Strike in Paragraph 1, the statutory committee authorized to fill a vacancy in nomination for a State Senate seat is the "Legislative Committee" (of the political party) for the appropriate Legislative District. The Election Code, at 5/8-5 clearly sets forth who is on the committee, when the committee must organize, and where the committee must meet.

The Election Code could not be clearer at 5/7-61 when mandating the procedures to fill a vacancy in ¶9:

"...a vacancy in nomination <u>shall</u> be filled only be a person designated by the <u>appropriate</u> committee of the political party..." (*Emphasis added*)

Although the Candidate, in Paragraphs 4 through 12 argues 5/10-8 as to the objections needing to be specific, the legal allegations as to the appropriate committee could not be clearer. The proof is submitted by the document filed by the Chairman of the 32<sup>nd</sup> Senate District Democratic Central Committee entitled "Resolution To Fill A Vacancy In Nomination." attached to the Objector's Petition and a part of the vacancy filling. This document clearly identifies in the second "Whereas" clause: in the "Be It Resolved" clause: and, under the signatures of the Chairman and Secretary, the 32<sup>nd</sup> Senate District Democratic Central Committee. The Election Code, at 5/7-8(a), provides for a State Central Committee of the particular party. This Central

Committee <u>does not</u> nominate candidates to fill vacancies in nomination, but serves the functions as described in 5/7-8.

The challenge to the papers filed and the qualifications pursuant to the Election Code is not the Resolution To Fill A Vacancy In Nomination as being the proper – or improper form. The clear challenge, and objection as set forth in Paragraphs 8 and 6 in the Objector's Petition, is to the <u>inappropriate appointment</u> of the candidate by virtue of an <u>inappropriate committee</u> seemingly making the appointment. The numerous paragraphs (13-51) attempting to discredit the clear objection to the inappropriate appointment by the inappropriate committee attempt to lead the argument away from the legal insufficiencies and violation of mandatory provisions of the Election Code.

The Candidate cites the *Wisnasky-Bettorf v. Pierce* case as his authority to defeat this objection. *Wisnasky*, 2012 IL 111253 (S.Ct. reversed Appellate Court). We join in on the Candidate's reliance on *Wisnasky* and ask the Hearing Officer to rely on its holding. We could not agree more that paragraphs 3 through 8 of 5/7-61 do not apply in this matter. Paragraph 9 of 5.7-61 clearly does – as stated by the Supreme Court. A clear reading of the holding at \*21 sets forth Objector's case herein:

"In such situations, paragraph 9 provides that the vacancy in nomination may be filled only when the following four conditions are met:

- (1) the person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question.
- (2) the designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the day the appropriate committee designates that person."
- (3) the designated person has filed, together, the following required documents, within 75 days after the day of the general primary: "his or her nominating petitions, statements of

eandidacy, notice of appointment by the appropriate committee, and receipt of filing his or her statement of economic interests," and

(4) "[t]he electoral boards having jurisdiction under Section 10-9 to bear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9]."

10 ILCS 5/7-61 (West 2010).

Although no "Resolution" need be filed in paragraph 9 filings, the Court was clear that the vacancy in nomination must be filled by the "appropriate committee of the political party," and a "notice of appointment" must be filled.

Thus, the Candidate can dance around through 38 paragraphs (13-51) attempting to rename, discredit, confuse or otherwise misname the objection, but the plain and simple answer is that the appropriate committee of the political party did not designate a candidate to fill the vacancy in nomination. That is the allegation in Paragraph 8 and 6. That is the objection – not that the Candidate should, or should not have filed a "Resolution."

There is barely a mention of the fatal error found in the Certificate of Organization, which clearly, in the certification section of the body, states that the <u>26<sup>th</sup></u> (not the 32<sup>nd</sup>) Legislative District Committee met on April 17, 2016. The 26<sup>th</sup> District Committee cannot nominate a candidate for the 32<sup>nd</sup> Legislative District.

# III. Date Vote Taken by Inappropriate Committee to Nominate the Candidate

In Paragraphs 52-58 of the Motion to Strike and Dismiss, the Candidate again attacks the Objector (and counsel for the Objector) alleging a "bad faith" objection, including insults in Paragraphs 53, 54, and 55. Rather than accusing the Objector of "bad faith" and failing to "read" the Resolution, perhaps the focus should have been on the objection itself.

The only date on the "Resolution" is the date found on the lower left hand corner, indicating "Date of Meeting: April 17, 2016." There is clearly no indication when a vote was taken, and if it was at that meeting.

Without the nomination date, we do not know the date circulation of the petitions can begin. The Election Code, at 5/7-61, paragraph 9, provides: "The circulation period for those petitions begins on the day the <u>appropriate</u> committee designates that person."

Neither the "Resolution" nor "Petitions" set forth the day the vote took place to designate the Candidate. The date of the meeting of the 32<sup>nd</sup> Senate District Central Committee of the Democratic Party, as specified in the Resolution, fails to have the appropriate committee designate a candidate and specify when the vote took place.

# IV. No Correct Designation of Legislative District

Although the incorrect designation of office and district is contained on the Petition sheets, the Objector recognizes *Nolan* and other substantial compliance cases regarding designation of office, and presents no further argument as to the objection stated in Paragraph 10 of the Objector's Petition.

# V. Insufficient Circulator's Affidavit

Paragraph 11 of the Objector's Petition clearly recites the mandatory language of the Election Code requiring the circulator to attest to the fact that the signers of the Petition were "qualified <u>primary</u> voters of the Democratic Party." The definition found in 5/3-1.2 is correct—as is the mandatory language required pursuant to 5/8-8, which requires the specified language. This is an obvious and clear violation of the mandatory provisions set forth in the Election Code for a circulator's affidavit.

## VI. Lack of Dates of Circulation

Paragraphs 12 and 13 of the Objector's Petition attack the circulator's affidavit since none of the required language as to dates of circulation appear within the affidavit. Although the Objector misstates the applicable section of the Election Code (typo when using 5/8-5 rather than 5/8-8). Paragraph 13 clearly recites, "...or any other appropriate section of the Election Code."

Again, the Candidate's attorney resorts to insults ("nonsensical, absurd, etc.") rather than substance, in answering this serious allegation. The circulator's affidavit is deficient on its face for the reasons stated in Paragraphs 12 and 13 of the Objector's Petition.

# VII. Wrong County in Statement of Candidacy

Paragraph 14 clearly specifies that the Candidate stated in her Statement of Candidacy that she is a qualified voter in McHenry County. Candidate states she is a qualified voter in Fox Lake. State of Illinois. That is a factual question, which clearly is sworn to by the Candidate in her Statement of Candidacy.

The Candidate and the nominating committee have made numerous errors, omissions, mistakes, and misstatements in the papers filed. The Candidate refers to all of their inaccuracies as "minor, technical, and scrivener's error." The Candidate, however, cannot avoid – nor can pass off as "minor or technical" direct violations of mandatory provisions of the Election Code as set forth above.

WHEREFORE, the Objector, MICHAEL SHORTEN, respectfully requests that the Objections be granted, and the relief requested in the Objector's Petition be allowed.

Respectfully submitted.

MICHAEL SHORTEN, Objector

By: /s/Burton S. Odelson
Burton S. Odelson

Burton S. Odelson Luke J. Keller ODELSON & STERK, LTD. 3318 West 95th Street Evergreen Park, IL 60805 (708) 424-5678 (708) 424-5755 – fax attybutt@od.com

# BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO RESOLUTIONS TO FILL VACANCIES IN NOMINATION SEEKING TO PLACE ESTABLISHED POLITICAL PARTY CANDIDATES ON THE BALLOT FOR THE NOVEMBER 8, 2016 GENERAL ELECTION

IN THE MATTER OF:	
Michael Shorten,	)
Petitioner(s) - Objector(s),	)
v.	) 16 SOEB GE 503
Melissa Coyne,	)
Respondent(s) - Candidate(s).	)

# RECOMMENDATION OF THE HEARING OFFICER TO THE GENERAL COUNSEL

This matter coming before the Illinois State Board of Elections sitting as the duly constituted State Officers Electoral Board and the undersigned Hearing Officer, pursuant to Appointment and Notice, makes the following Recommendation.

## CASE MANAGEMENT CONFERENCE

A Case Management Conference was held on June 13, 2016, following the calling of the cases. Burton Odelson filed an Appearance on behalf of the Objector. Ross D. Secler filed an appearance on behalf of the Candidate. It was indicated the matter would be decided based on the motions to be filed pursuant to the schedule set forth in the Rules at appendix B. A status was scheduled for June 22, 2016, following the conclusion of the briefing schedule.

## II. BACKGROUND

No candidate's name appeared for the Democratic Party on the General Primary ballot conducted March 15, 2016, for the office of State Senator in the 32nd Legislative District nor

was anyone nominated for said office as a write-in candidate. Thus, a vacancy in nomination was created.

The appropriate entity to nominate a candidate, in accordance with the provisions of Section 10 ILCS 5/1-1, et seq., is the Legislative Committee of the Democratic Party for the 32nd Legislative District.

Candidate Melissa Coyne was selected and timely filed her nomination petitions,

Statement of Candidacy, Certificate of Legislative or Representative Committee Organization and Resolution to Fill a Vacancy in Nomination.

An Objection was timely filed alleging the following deficiencies:

- The "Certificate of Legislative Committee Organization" filed May 24, 2016, with the State Board of Elections is certified by Michael Bissett (Chairman) and Terry Link (Secretary) of the 32nd Legislative District and dated April 17, 2016.
- The "Resolution to Fill a Vacancy in Nomination" (Resolution) that was filed with the Petition on May 31, 2016 nominated Melissa Coyne as the Democratic candidate for State Senator in the 32nd Legislative District.
- 3. The Resolution states the Candidate was nominated by the 32nd Senate District Central Committee rather than 32nd Legislative Committee.
- 4. The Resolution does not state the date on which the committee met and voted to nominate the Candidate.
- 5. Each petition sheet states "32nd District" rather than "32nd Legislative District."
- 6. The circulator's affidavit does not specify that the voters signing were "qualified primary electors of the Democratic Party".
- 7. The wording "... after, the appropriate managing committee's selection of the candidate as the party's nominee..." is improper and not the certification required by par. 5/8-8.

8. The Statement of Candidacy is false since the Candidate has sworn she is a qualified voter in McHenry County when she is a resident of Lake County.

# III. MOTIONS

The following Motions were timely filed and will be discussed in detail.

# (A) Candidate's Motion to Strike and Dismiss Objector's Petition, or, in the Alternative, Motion for Summary Judgment

The thrust of the Candidate's argument is that any objection to the "Resolution to Fill a Vacancy in Nomination" must fail because Paragraph 9 of Section 5/7-61 of the Election Code is controlling. Paragraph 9 of Section 5/7-61 does not require the Candidate to file a Resolution when no Candidate was nominated at the General Primary. The Candidate contends *Wisnasky – Bettord v. Pierce*, 965 N.E. 2d 1103, 358 III. Dec. 624, 2012 IL 111253 (2012), governs. Therein, the Illinois Supreme Court stated paragraph 9, and not paragraphs 3-8, in Section 7-61, apply in those situations where no candidate's name appeared on the General Primary ballot and no one was nominated as a write-in.

The *Pierce* ruling sets for the requirements to fill a vacancy in nomination in those factual situations, as in the present matter, when a name did not appear on the General Primary ballot and no one was nominated as a write-in candidate:

- (1) The person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question.
- (2) The designated person obtain nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the day the appropriate committee designated that person."
- (3) The designated person has filed together, the following required documents, within75 days after the day of the general primary:

- (i) His or her nominating petitions,
- (ii) Statement of Candidacy,
- (iii) Notice of appointment by the appropriate committee, and
- (iv) Receipt of filing his or her statement of economic interests, and
- (v) The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9].

Pierce, 2012 IL 111253 at ¶ 21.

Finally, the Candidate contends the Objector failed to allege upon what basis the Candidate was required to include the date of her appointment in any filing.

# (B) Response to Motion to Strike and Dismiss

# (1) The Appropriate Democratic Committee to Fill a Legislative Vacancy

The Objector argues that the statutory committee authorized to fill a vacancy in nomination for a State Senate seat is the "Legislative Committee" for the appropriate Legislative District. Furthermore, Objector points out that Section 5/8-5 of the Election Code spells out who comprises the committee, when the committee must organize and when the committee must meet. Additionally, it is noted that Section 5/7-61 provides "... a vacancy in nomination shall be filled by a person designated by the appropriate committee of the political party ... (emphasis added by Objector).

Objector points out that "Legislative Committee" is the appropriate designation to fill a vacancy for State Senate in the 32nd Legislative District. The "Resolution" attached to the Candidate's petitions however, states "32nd Senate District Central Committee".

Objector does not challenge the form of the "Resolution". In essence, Objector argues the inappropriate committee made an inappropriate appointment.

Objector agrees that the *Pierce* case is controlling and only Paragraph 9 of Section 5/7-61 applies and points out in his motion:

Although no "Resolution" need be filed in paragraph 9 filings, the Court was clear that the vacancy in nomination must be filled by the "appropriate committee of the political party" and a "notice of appointment" must be filed.

Their Objector argues the fact that the appointment was not made by the "Legislative Committee" invalidates the appointment.

# (2) <u>Date Vote Taken by Inappropriate Committee to</u> Nominate the Candidate

Objector points out the only date on the "Resolution" is found in the lower left hand corner, to wit, "Date of Meeting, April 17, 2016". Whether a vote was taken at the meeting is not clear. The absence of the date the vote was taken makes it impossible to determine when the circulation period begins.

# (3) <u>No Correct Designation of Legislative District.</u>

The Objector acknowledges, as pointed out in Candidate's Motion, that *Nolan v. Cook*County Officers Electoral Board, 329 III.App.52, 58 (1<sup>st</sup> Dist., 2002), held a candidate's petitions were valid when there was some reference to the correct district elsewhere in the petitions.

#### (4) Insufficient Circulator's Affidavit

Objector contends the circulator's affidavit is defective because of the failure to attest that the signers of the Petition were "qualified primary voters of the Democratic Party."

## (5) Lack of Dates of Circulation

The Objector contends the circulator's affidavit is defective because it does not specify any of the 3 options set forth in Section 5/8-8.

## (6) Wrong County in Statement of Candidacy

It is pointed out by the Objector that the Statement of Candidacy is false because the Candidate has falsely sworn she is "a qualified voter in McHenry County" when she is a resident of Lake County.

## IV. ANALYSIS

Initially, a cursory review of the relevant statutes results is necessary.

Section 5/7-61 states, in relevant part, "... a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party ..."

The appropriate committee to fill a vacancy in nomination when no candidate has been nominated for State Senator at the General Primary Election is the Legislative Committee. (Section 5/8-5). Section 5/8-5 also provides that the chairman of each county central committee of such party in any portion of which county is included within such district, when the district is located outside Cook County, shall serve on the Legislative Committee.

Wisnasky – Bettorf v. Pierce, 2012 II. 111253, (2012), discusses whether or not a resolution is required to be filed when a vacancy in nomination is created because no candidate was nominated at the General Primary Election. Both sides agree that paragraphs 3 through 8 of Section 5/7-61 are not applicable because a resolution need not be filed with the nomination petitions. In the present factual situation only paragraph 9 applies as set forth in Pierce:

¶ 21 In such situations, paragraph 9 provides that the vacancy in nomination may be filled only when the following four conditions are met: (1) the person to fill the vacancy in nomination has been "designated by the appropriate committee of the political party" in question, (2) the designated person obtains nominating petitions with the number of signatures required for an established party candidate for that office, with the circulation period to begin "on the date the appropriate committee designates that person," (3) the designated person has filed, together, the following required documents, within 75 days after the day of the general primary: "his or her nominating petitions, statement of candidacy, notice of appointment by the appropriated committee, and receipt of filing his or her statement of

economic interest," and (4) "[t]he electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under [paragraph 9]."

In the case at bar, the Candidate submitted both a "Certificate of Legislative and Representative Committee Organization" and a "Resolution to Fill a Vacancy in Nomination."

The "Resolution" states "32nd Senate District Central Committee" rather than "32nd Legislative District Committee".

Objector contends that since the committee was inappropriate, the subsequent appointment was inappropriate. The Candidate argues, based on the ruling in *Pierce*, the "Resolution" was not required to be filed and therefore cannot be challenged. Objector responds that while a "Resolution" need not be filed in Paragraph 9 filings, the vacancy in nomination must be filled by the appropriate committee <u>and</u> a notice of appointment filed. Furthermore, the Candidate contends the Objector cannot challenge the failure to file a Notice of Appointment because that was not raised as an issue in the Objection.

There appears to be two primary issues: (1) whether the appropriate committee made the appointment, and (2) was a Notice of Appointment by the appropriate committee submitted.

The 32nd Legislative Committee is comprised of portions of Lake and McHenry Counties. The Certificate of Legislative or Representative Committee organization was signed by Michael Bissett as Chairman and Terry Link as Secretary. Mr. Link is the Lake County Democratic Party Chairman while Mr. Bissett is the McHenry County Democratic Party Chairman. Reference is made both to the 26th as well as the 32nd Legislative District in the Certificate and the committee met April 17, 2016.

The "Resolution" states a candidate was not nominated for State Senator in the 32nd District at the March 15, 2016 election. Rather than "Legislative Committee", the "Resolution"

states "32nd<sup>th</sup> Senate District State Central Committee". Nevertheless, it is apparent the "Resolution" signed by Bissett and Link was intended to nominate a candidate in the 32nd Legislative District for the office of State Senator. The failure to insert "Legislative Committee" should not invalidate the nomination since it was signed by the appropriate persons. Thus, there appears to be substantial compliance.

The second factor to be considered is whether the appropriate Notice of Appointment was submitted. The Candidate contends the Objector is precluded from raising an issue as to the Notice of Appointment because it was not raised in the objection. I respectfully disagree. It is apparent the validity of the appointment was intertwined with the issue of whether the appropriate committee made the appointment.

I conclude the "Resolution" had the effect of effectively appointing the Candidate for the following reasons:

- Signed by the proper persons who comprised the 32nd Legislative Committee, to wit, Bissett and Link,
- Specifies the office to be filled and the appropriate political party,
- Designates the name of the candidate, and
- States the date of the meeting.

The date on which the candidate was nominated is also challenged. While April 17, 2016, is listed as the "date of meeting", the Objector contends the date the Candidate was nominated is not specified. Failure to list the date of nomination is significant because the circulation period cannot begin until the Candidate has been nominated.

Though not specified, it is a logical conclusion and a reasonable inference that the "date of meeting" is also the date the nomination occurred. It would have been preferable to specify "date of designation and appointment meeting: April 17, 2016".

The Objection that Office is designated as "32nd District" rather than "32nd Legislative District" is governed by *Nolan* which held a candidate's petitions valid when there was some reference to the correct district elsewhere in the petitions. Thus, there has been substantial compliance.

The Objection that the petition is defective because the circulator attests to the fact the signers were "qualified voters of the Democratic Party" rather than "qualified primary voters of the Democratic Party" should be denied.

The Objector argues each and every petition sheet is invalid since the circulator's affidavit does not specify any of the three options specified in Section 5/8-8. The 3 options are:

- (1) Indicate the date on which he or she circulated that sheet.
- (2) Indicate the first and last dates on which the sheet was circulated, and
- (3) Certify that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition.

The Petition form states "... the signatures on this sheet were signed in my presence.

after the appropriate managing committee's selection as the party's nominee ..."

The County Convention was held on April 13, 2016. Thereafter, the County Chairman in each county for the respective party was selected. Subsequent to that selection, members of the Legislative Committee nominated a candidate to fill the vacancy. The earliest a candidate could have been nominated was April 13, 2016, which is 48 days prior to the May 31, 2016 filling deadline. Furthermore, between the date of the Primary Election and May 31, 2016 is 75 days. Thus, the period of circulation in the nomination petition cannot be more than the 90 day period set forth in Section 5/8-8. Furthermore, petition form P-10A, supplied by the State Board of Elections, incorporates the language to which the Objection was filed.

For the reasons set forth herein, the language in the Circulator's affidavit satisfies the

requirement of Section 5/8-8.

Finally, though the Statement of Candidacy states the Candidate is a qualified voter in

McHenry County, it is clear from reviewing the petitions that she is a registered voter in Lake

County.

RECOMMENDATION

Initially, it should be pointed out that Objector's attorney cited examples of "the

unprofessional attacks, accusations, disrespectful (to the profession, as well as the Election

Bar) recitations by the attorney for the Candidate." Without discussing the details. I agree it is

beyond advocacy and it was not necessary to resort to what I characterize as personal and

unprofessional attacks.

The errors pointed out by the Objector in the Certification of Legislative or

Representative Organization" and "Resolution to fill a Vacancy in Nomination" are the result of

careless practices that invite objections. Nevertheless, the errors noted are not enough to

warrant the Candidate's removal from the ballot.

For the reasons set forth above, I recommend the objection be overruled.

DATED: June 29, 2016

James Tenuto, Hearing Officer

Jana Tanuto

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PASSING UPON OF OBJECTIONS TO THE PETITIONS FOR ELECTION FOR THE OFFICE OF STATE SENATOR, 32<sup>nd</sup> LEGISLATIVE DISTRICT, STATE OF ILLINOIS TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION

MICHAEL SHORTEN,	)	
Petitioner-Objector,	)	
V.	)	No. 16 SOEB GE 503
<b>v.</b>	)	No. 16 SOLB GE 505
MELISSA COYNE,	)	
Respondent-Candidate.	)	

# OBJECTOR'S EXCEPTIONS TO RECOMMENDATION OF THE HEARING OFFICER TO THE GENERAL COUNSEL

NOW COMES the Objector, MICHAEL SHORTEN, by and through his attorneys. ODELSON & STERK, LTD., and pursuant to Rule 5, brings the following Exceptions to the Recommendation of the Hearing Officer to the General Counsel and Board. The Objector respectfully requests the General Counsel and Board not follow the Recommendation of the Hearing Officer, and grant the relief requested in the Objector's Petition. The following arc the Exceptions and law supporting the Objector's Petition.

# I. Substantial Compliance is Not the Appropriate Standard When Political Party Leaders Attempt to Nominate a Candidate

As in 16 SOEB GE 502, this is an interesting case. It is not the very typical instance when candidates attempt to qualify for a ballot position by gathering signatures of the electorate who request his or her name be put on the ballot at the primary or general election. Here, we have two political party leaders, the Chairman and Secretary of the "Central" Committee. nominating their candidate to fill a vacancy created when no one ran in their primary election.

The supporting petitions do ask that the nominee be put on the ballot, but only in support of the designation by the political party leaders.

Thus, the "substantial compliance" theory and practice in the line of cases applicable to the candidate/electorate nominations should not, and is not, the standard, when two, three, or more political party leaders choose the candidate in place of the electorate. Rather, the political party leaders should be held to "strict compliance" and strict scrutiny to the mandatory provisions of the Election Code. This "short cut" method of nomination subverts the "people" initiated candidacies typically brought forth by grassroots, everyday registered voters.

The courts have given great leeway to allow ballot access to those who make mistakes in the petition gathering – filing process. This "relaxed" standard should not – and does not, apply to the "short cut" to ballot access where the primary system has been avoided and the political party leaders take the "easy way" to the ballot through 10 ILCS 5/7-61, 10 ILCS 5/8-5 and 10 ILCS 5/8-17. This "easy access," shortcut method I will call the "Fast Pass," must be strictly complied with by the political party leaders since it runs contrary to the very core of our democratic election roadmap from the Australian Ballot Law to our modern electronic voting: the heart of gaining a ballot spot – and ultimate election, is running against an opponent after the electorate has given the candidate a "modicum" of support through the petition process.

Although the General Assembly has seen fit to provide the mechanism to fill a vacancy in nomination, it is not what our forefathers had in mind when free and equal elections were prescribed by the U.S. and Illinois Constitutions. Thus, although we currently have the "Fast Pass" to the ballot mechanism, this Board – and the courts, should apply a "strict compliance" and "strict scrutiny" test to the "Fast Pass" provisions of the statute, since those provisions run contrary to the constitutional and statutory means of the voter-based, candidate support, access to

the ballot. This "political" nomination path to the ballot is far easier to subvert and invade the integrity of the electoral process, than the petition gathering, grassroots method of gaining ballot access.

# II. Law Regarding Ballot Access: Constitutional Rights v. Political Privilege

# A. Mandatory v. Directory - The Legislature May Regulate Political Party Nominations

"The right of political parties to make nominations for an office is not enumerated in the Constitution, but a 'political privilege.' The legislature may choose to regulate the 'political privilege'...." Sutton v. Cook County Officers Electoral Board, 2012 IL App (1<sup>st</sup>) 122528.

The legislature has chosen to regulate the "political privilege" of putting a candidate on the ballot <u>after</u> the voters have gone to the polls in the primary, but found no candidate for a particular office to nominate. The result is spelled out in Articles 7 and 8 of the Election Code which provides <u>clear</u> penalties for noncompliance with the clear, unambiguous directions.

## 10 ILCS 5/8-1:

"The nomination of all candidates for Members of the General Assembly...shall be made in the manner provided in this Article 8 [10 ILCS 5/8-1, et seq.] and not otherwise. The name of no person, nominated by a party required hereunder to make nominations of candidates for members of the General Assembly shall be placed upon the official ballot to be voted at the general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article 8." (Emphasis added).

Unless the political leaders follow the mandated directions in Article 8 ("and not otherwise"), no person's name shall appear on the ballot. Thus, the ultimate sanction of removal from the ballot is imposed if the political leaders stray from the mandates of the Election Code.

- 1. The "appropriate" committee did not nominate the Candidate:
- 2. No date of selection was specified on the "Resolution";
- 3. No Notice of Appointment was filed; and
- 4. The meeting, as sworn and certified to by the Chairman and Secretary, was not in the 26<sup>th</sup> Legislative District.

Again, 5/8-17 provides the penalty that:

"...<u>no candidate</u> of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate...."

Article 7 also provides, in mandatory language, the penalty for noncompliance:

"...nomination of all candidates...shall be made in the manner provided in this Article 7 and not otherwise." 10 ILCS 5/7-1. (Emphasis added).

And, once again, in 10 ILCS 5/7-61, **9**:

"...a vacaney in nomination shall be filled only by a person designated by the appropriate committee...."

As our Supreme Court set forth in *Pullen v. Mulligan*, 138 III.2d 21, 46, 149 III.Dec. 215, 561 N.E.2d 585 (1990):

"Statutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision."

Clearly, it is directed by the legislature in 10 ILCS 5/8-1, "...and not otherwise.", and

"The name of <u>no</u> person...shall be placed upon the official ballot...unless such person <u>shall</u> have been nominated...under the provisions of this Article 8."

And again in 10 ILCS 5/8-17:

"...no candidate...may listed on the ballot...unless the legislative...committee of the party nominates a candidate..."

And, as also set forth above in 5/7-1 and 5/7-61, the clear, plain language of the statutes provides the penalty for noncompliance in four different sections of the applicable statutes.

# B. The Provisions Regulating the Process of Political Party Leaders Nominating "Fast Pass" Candidates are Mandatory and Not Subject to a "Substantial Compliance" Test

As set forth above. Articles 7 and 8 clearly set forth, in mandatory, clear language, the necessary elements for political party leaders to nominate a candidate to run in the general election after the party has chosen to bypass the primary and not run a candidate. This process should be — and is, treated differently by the General Assembly and the courts, then the grassroots, citizen candidate petition process.

In Zerante v. Bloom Township Electoral Board, 287 III.App.3d 976 (1997), the Appellate Court held 7-61 mandatory and removed the political party nominee from the ballot for failure to specify the date when the candidate was selected on the Resolution to Fill a Vacancy. Although this was prior to the 2009 amendment to 5/7-61, the court spoke to the requirements in the statute and the reasoning as to why the filling of vacancies in nomination required mandatory compliance with the provisions.

If a statute is clear and unambiguous, and also provides a penalty for failing to comply with its provisions, it will be construed as mandatory.

"In other words, when a statute specifies what result will ensue if its terms are not complied with, then the statute is deemed mandatory." *Simmons v. DuBose*. 142 Ill.App.3d 1077, 97 Ill.Dec. 150, 450 N.E.2d 586.

Marquez v. Aurora Board of Election Commissioners, 357 Ill.App.3d 197, 293 Ill.Dec. 567, 828 N.E.2d 877 (2005).

Our Supreme Court acknowledged that it must look at the legislative intent of the statute in order to determine whether it is a mandatory or directory provision. *Pullen*, 138 III.2d 21, 46: *People v. Robinson*, 217 III.2d 43 (2005). When the, "...statute prescribes a consequence for

failure to obey a statutory provision, that is very strong evidence the legislature intended that consequence to be mandatory." *Robinson*, at 54.

Again, our Supreme Court, in deciding a matter against the Secretary of State and State Board of Elections, and others, found 10 ILCS 5/7A-1 unconstitutional as it related to judges seeking retention in *O'Brien v. Jesse White, et al.*, 218 III.2d 86 (2006). The court, citing *People v. Robinson, Id., Marquez v. Aurora Board of Election Commissioners, Id.*, and other cases, found that an Election Code statute is mandatory when its, "provision specifies the consequences of noncompliance." *O'Brien*, at 97, 98.

There is no doubt that the sections pertinent to this matter, cited above, provide a consequence for noncompliance. Section 5/8-1 has, "and not otherwise"; "no person...shall be placed on the ballot"; "shall have been nominated under the provisions of this Article 8." Following, in 5/8-17, "...no candidate of that party may be listed on the ballot...."

Both sections are punitive, recite consequences, and relate to the party leaders complying with the statutes in question.

Likewise, 5/7-1 ("nomination of all candidates shall be made in the manner provided in this Article 7 and <u>not otherwise</u>); and 5/7-61 ("vacancy...shall be filled <u>only</u> by a person designated by the appropriate committee") also have disqualifying consequences if the provisions of the statute are not followed.

Very recently in *Jackson-Hicks v. East St. Louis Board of Election Commissioners*. 2015 IL 118929, our Supreme Court again visited the mandatory requirements of the Election Code. Citing with approval, *O'Brien, Id.*, and *People v. Robinson, Id.*, the court stated: "The mandatory-directory dichotomy concerns the consequences of failure to fulfill an obligation, *i.e.*, whether " 'the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates."

\* \* \*

"If a statute prescribes a consequence for failing to obey its provisions, that is a strong indication that the legislature intended it to be mandatory." *Id.*, at 96, 301 Ill.Dec. 154, 846 N.E.2d 116.

The court methodically recites the reasoning an unambiguous provision of the Election Code is mandatory, not directory, with "substantial compliance" not being the appropriate relief from the mandate of the law.

"Generally speaking, requirements of the Illinois Election Code are mandatory, not directory." *Purnell v. Municipal Officers Electoral Board*, 275 Ill.App.3d 1038, 1039, 212 Ill.Dec. 360, 657 N.E.2d 55 (1995); *Kellogg v. Cook County Illinois Officers Electoral Board*, 347 Ill.App.3d 666, 670, 283 Ill.Dec. 320, 807 N.E.2d 1161 (2004).

Jackson-Hicks, Id., at \$23.

Very similar to the facts herein, the words "not less than" were the key words that provided the Court with the necessary "consequence" to find the statute in question mandatory. Getting "close" to complying with the statute is not good enough. Compare the wording in 5/8-1, "and not otherwise", and in 5/7-1, "and not otherwise", with "not less than", as used in 5/10-3, the section analyzed in *Jackson-Hicks*. Applicable herein, the court stated at ¶31:

"Implicit in the law's provision that nominations may be made through nomination papers containing "not less than" the required minimum numbers of signatures is that nominations may *not* be made through nomination papers containing a number of signatures which is less than the minimum required by law. The latter proposition is a corollary of the former. It was no more necessary for the legislature to explicitly state the consequence of failing to meet its fixed numerical threshold that it would be in the case of the final election returns."

Thus, nominations made by political leaders to "Fast Pass" their chosen candidates to the general election ballot after bypassing the primary process, may <u>not</u> be made through a nomination process that comes "close" to being the right committee; that comes "close" to the correct procedure as set forth in the statute (Resolution to Fill a Vacaney rather than a Notice of Appointment); that comes "close" to stating the date of selection (by referring to the date of the meeting); that comes "close" to being the correct committee, but is the wrong committee and the wrong political party leaders (from the 26<sup>th</sup> and not the 32<sup>nd</sup> Legislative District (*See* Certificate of Legislative Committee Organization)); or that comes "close" to the correct circulator's affidavit, but not any of the specific choices set forth in the statute.

"Runners-up have no claim to office on a theory that they came close enough. So it has always been in American electoral politics. So it remains."

Jackson-Hicks, at ¶31.

\* \* \*

"There is no close enough."

Jackson-Hicks, at ¶37.

Finally, the court, in analyzing the signature requirement provisions in 5/10-3 and 5/10-3 1 of the Code states:

"That is the standard the Election Board was bound to follow. It is the standard we are required to enforce. To adopt the Mayor's position instead would require us to disregard the clear, unambiguous and mandatory language of the statute and graft onto it exceptions and limitations the legislature did not express. As noted at the outset of this opinion and confirmed by our election law jurisprudence, that is something the courts may not do."

Jackson-Hicks, at \$35.

This matter is not a simple "substantial compliance," he came "close" enough, case. The General Assembly was careful in providing clear, unambiguous requirements for those candidates to be put on the general election ballot by the political leaders – and not the people. The directions and mandate of our Supreme Court must be strictly followed for the "Fast Pass" procedures, which run contrary to the design of citizen initiated petitions and candidacies as set forth in our Constitution and statutes.

# III. Hearing Officer Applied Less Than Substantial Compliance Test and Certainly Not Mandatory Compliance Standard

The Hearing Officer was more than lenient in his treatment of the deficiencies contained in the Candidate's filings. His summation of the facts and issues are excellent. However, in straining to maintain ballot access (which is usually the preferred route), "substantial compliance," or even a lesser standard, was incorrectly applied to the facts of this political appointment case. Strict scrutiny is certainly the standard when ballot access is in question by a means other than the grassroots petitions of the people. Too much leeway was afforded to two political leaders to nominate a candidate through the political process without following the statutes in question.

At pages 8, 9, 10, and 11 of his Recommendation, the Hearing Officer explains his findings. First, the "Resolution" (which is the wrong document to begin with) clearly lists the nominating committee as the 32<sup>nd</sup> Senate District State Central Committee. The Election Code, at 10/5-7-8(a), clearly provides for a State Central Committee. That is <u>not</u> the "appropriate" committee (as set forth in 5/8-17 and 5/7-61) to nominate a "Fast Pass" candidate for State Senator. The Hearing Officer's presumption that, "...it is <u>apparent</u>...that the political party leaders "intended" to nominate a State Senator", in the 32<sup>nd</sup> Legislative District is <u>not</u> in

compliance with the statutes recited above. What the two political leaders "intended," has no bearing on the improper Resolution, containing an improper committee, which has no power or authority to nominate a State Senator pursuant to Article 8 or Article 7 of the Election Code. The only thing "apparent" from the document is that an inappropriate committee attempted to nominate a candidate.

The second issue as to a Resolution being used rather than a Notice of Appointment, as specified in the statute, is also improper. The Hearing Officer states that the improper Resolution "had the effect" of effectively appointing the Candidate. (Interestingly, the Candidate also agrees the Resolution was improper and not needed since the purported "appointment" was under paragraph 9 of 5/7-61; *See* Motion to Strike). Although unsaid, substantial compliance seemingly is being invoked again, although the 9<sup>th</sup> paragraph of 5/7-61 does not mandate a "Resolution" (first 8 paragraphs of 5/7-61 require a Resolution), but does require a Notice of Appointment, which was not filed. Our Supreme Court has never, to this counsel's knowledge, in Election cases, used the "had the effect" standard, in order to find compliance with a mandatory provision of the Code.

As to the date of selection of the Candidate, at page 9 of the Recommendation, the Hearing Officer makes "a logical conclusion" and "a reasonable inference" that the date of the meeting is also the date the nomination of a candidate occurred. The Hearing Officer is again too generous (and supplies the correct, statutory language). The courts have not been that generous since *Zerante*, *supra*.

On page ten of his Recommendation, the Hearing Officer finds "substantial compliance" with the objections raised as to the name of the office on the petitions (32<sup>nd</sup> District rather than 32<sup>nd</sup> Legislative District). Although this error is apparent on the face of the petitions, the

Objector will stand on his original arguments and offers nothing further in support of the arguments made. Likewise, as to the Hearing Officer's rejection of the Objection raised as to lack of the word "primary" in the Circulator's Affidavit, no further arguments will be advanced on that issue.

Also, on page ten of the Hearing Officer's Recommendation, the arguments concerning the lack of circulation dates pursuant to 5/8-8 is discussed. The Objector takes great exception to these findings. The language required by 5/8-8 and 5/7-10 as to the inclusion of circulation dates has always been held to be mandatory. *Simmons v. DuBose*, 142 III.App.3d 1077, 97 III.Dec. 150, 492 N.E.2d 586 (1986).

Recently, in *Mahwa v. Mendoza*, 2014 IL App (1<sup>st</sup>) 142771, the Appellate Court, in citing *Simmons* affirmatively, and denying a writ of mandamus, held there was no clear right to relief "where plaintiffs completely ignored a specific requirement set forth in the Act by failing to file, with their petitions, the statutorily required attestations from the circulators swearing to the dates on which the voters signed...." *Mahwa*, at ¶53.

And even more recently, Justice Holdridge, in *Schwartz v. Kinney*, 2016 IL App (3d) 160021, wrote when referring to Section 7-10 and the circulator affidavit requirement:

"Section 7-10 prescribes the required contents of nominating petitions and the accompanying affidavits. To determine whether a party has substantially complied with those requirements, we should look only to the content of the written documents themselves."

Schwartz, at ¶27.

The Hearing Officer, at the bottom of page 10 of the Recommendation, last paragraph, explains details of a "County Convention" and procedures related to picking a County Chairman, as well as hypotheticals as to when the earliest date a candidate could circulate would have been.

None of these facts are in the record. None of these hypotheticals were stated in any pleadings or hearings before the Hearing Officer. This paragraph is not relevant, not in evidence, and does nothing to buttress the Candidate's arguments.

Quite simply, the circulation dates are not contained in the petitions. No language as prescribed by 5/8-8 or 5/7-10 as to dates of circulation are included in the circulator's attestation. The only language refers to language found in sample form P-10A of the Board as to circulation of the petition. The language supplied on the form <u>is not</u> contained in the appropriate statutes cited above. The Board does not have the authority to legislate language and insert it into a "sample petition." The Candidate should have been aware – as is disclaimed by the Board's publications, that an attorney should be consulted when preparing petitions or other election forms:

"Legal information contained in this guide is not binding and should not be construed as sufficient argument in response to an objection to any candidate's nominating papers. The State Board of Elections recommends that all prospective eandidates consult with competent legal counsel when preparing their nominating papers."

State of Illinois, Candidate's Guide, 2016.

This Objection should be sustained. The circulator's affidavit, as it pertains to a circulation time period (in the 9<sup>th</sup> paragraph of 5/8-8), contains <u>no</u> language from Section 5/8-8. Even if substantial compliance was the standard (which it is not), how can you substantially comply when <u>none</u> of the required language is present? There is no compliance – not even "elose."

Although the face of the Statement of Candidaey clearly sets forth the Candidate is swearing to the fact she is a qualified voter in MeHenry County, she obviously is not. The

Objector stands on the arguments made in the Objector's Petition (¶14), and Response to Motion

to Strike and Dismiss (page 7).

IV. Conclusion

The Hearing Officer is a longtime respected attorney and colleague. Objector's counsel

greatly respects him and his work through the years. In this case, however, the use of

"substantial compliance," "logical conclusions," and what may – or may not, be "apparent," are

not the correct criteria to be used to gain ballot access for political committee appointees.

This is a strict compliance and strict scrutiny case. There are some laws that just cannot

be stretched to allow a candidate ballot access. The integrity of our electoral process demands

otherwise – especially when political party leaders (in this case, just two) attempt to place a

candidate on the ballot the "Fast Pass" way, and avoid the primary process. As aptly stated by

our Supreme Court in Jackson-Hicks, "there is no close enough" when attempting to comply

with mandatory provisions of the Election Code.

WHEREFORE, the Objector, MICHAEL SHORTEN, respectfully requests that the

Recommendation of the Hearing Officer, as set forth above, not be followed, and the Objections

be sustained.

Respectfully submitted,
MICHAEL SHORTEN Objector

MICHAEL SHORTEN, Objector

By: /s/Burton S. Odelson

Burton S. Odelson

Burton S. Odelson

Luke J. Keller

ODELSON & STERK, LTD.

3318 West 95th Street

Evergreen Park, IL 60805

(708) 424-5678/(708) 424-5755 - fax

attybust & pol.com

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